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THE REGULATION OF COMMERCIAL BANKS IN ZAMBIA
AND THEIR ROLE IN DEVELOPMENT

BY

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A DISSERTATION SUBMITTED TO THE UNIVERSITY OF WARWICK
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OF DOCTOR OF PHILOSOPHY.

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DEDICATION

This work is dedicated to my daughter and only child Nasilele Ailola - Mwana wa libanda Mulimu Amutuse a Yoye; and to my brother Sikopo Ailola - The man who raised me from the age of 10 when my father died, until I was able to sustain myself. It is from him that I learnt the value of persistence and determination to achieve, even against financial and other personal odds.

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LIST OF ABBREVIATIONS AND ACRONYMS

AAC -	Anglo American Corporation
AD. Circular -	Administrative Circular
ACID -	Advisory Committee on Industrial Development
AFC -	Agricultural Finance Company
AIR -	All India Reports
BSACo -	British South Africa Company
COZ -	Credit Organisation of Zambia
DCO -	District Colonial and Overseas
DPP -	Director of Public Prosecutions
ECA -	Economic Commission for Africa
EACA -	East African Court of Appeal
FINDECO -	Finance Development Corporation
FAO -	Food and Agricultural Organisation
GNP -	Gross National Product
GDP -	Gross Domestic Product
HMSO -	Her Majesty's Stationary Office
IMF -	International Monetary Fund
INDECO -	Industrial Development Corporation
IDOC -	International Documentation
L.Co. -	Local Company
LTC -	Land Tenure Centre
MSB -	Management Services Board
MINDECO -	Mining Industrial Corporation
NAMBOARD -	National Agricultural Marketing Board

OECD -	Organisation for Economic Corporation and Development
PLC -	Public Liability Company
PWD -	Public Works Department
RST -	Rhodesian Selection Trust
SA -	Society Annominey
SNDP -	Second National Development Plan
SJZ -	Selected Judgments of Zambia
TNDP -	Third National Development Plan
UDI -	Unilateral Declaration of Independence
UNIP -	United National Independence Party
UN -	United Nations
UNSW -	University of New South Wales
ZNCB -	Zambia National Commercial Bank
ZNPF -	Zambia National Provident Fund
ZIS -	Zambia Information Service
ZIMCO -	Zambia Industrial and Mining Corporation

EXCHANGE RATE: ZAMBIA KWACHA TO US \$

1970	K1.00	= US \$1.40
1975	K1.00	= US \$1.55
1976	K1.00	= US \$1.40
1977	K1.00	= US \$1.27
1978	K1.00	= US \$1.23
1979	K1.00	= US \$1.26
1980	K1.00	= US \$1.27
1981	K1.00	= US \$1.14
1982	K1.00	= US \$1.07
1983	K1.00	= US \$0.78
1986	K1.00	= US \$0.16

5th May 1987 rate fixed at K8 = US \$1.00

Fiscal Year January 1 to December 31

SOURCE: Bank of Zambia and World Bank.

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That this study has now been completed is no mean achievement as it has been pursued under severe personal and financial odds. Indeed without the help and encouragement of certain persons and institutions this stage would not have been reached. It is these persons and institutions that I now wish to single out and thank.

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DECLARATION

I DAVID AKAPELWA AILOLA, do hereby declare that this dissertation entitled:

The Regulation of Commercial Banks In Zambia
and Their Role in Development

is entirely the outcome of my own work, and that no part of it represents collaboration with others except where other research is specifically referred to and acknowledged in footnotes and bibliography.

I further declare that this dissertation is not substantially the same as any that I have (or may have) submitted for a degree or Diploma or other qualification at any other university and that no part of it has already been or is being concurrently submitted for any such degree, qualification or Diploma.

DATE... 31.11.88

SIGNED.



PREFACE

This work analyses the regulation of commercial banks in Zambia and its impact on the role that these institutions are playing in national development. The background to this analysis is the conviction that as these institutions control enormous amounts of resources, or are capable of doing so, then they need certain incentives to make them available for investment. These institutions are not using their own money. Such incentives or inducements therefore must ensure that those resources are safely invested. The incentives envisaged include regulations both of the institutions themselves as well as the economic system. It is these aspects that this work examines.

The work is divided into six basic chapters. The first chapter is the introduction which makes the case for a role to be played by commercial banks in development, under proper regulation. The second chapter gives a historical origin of banks in Zambia, including the circumstances of existing commercial banks. Chapter three deals with the regulations affecting commercial banking. This is basically an outline of the various statutes enacted in the country since the colonial days. Chapter four makes the case for the actual relevance or need for commercial bank involvement in Zambia's economic development. It sketches out the historical shortage of resources in investment. Chapter five deals with the actual role played by banks in Zambia's development, while chapter six appraises the effect of the regulations on that performance.

The seventh chapter is a summary of the study and the conclusions reached. The law is stated as it stood in 1985, although recent developments and laws known to the author are included.

CHAPTER ONE

INTRODUCTION

1:0 STATEMENT OF THE PROBLEM

This work looks at the regulation of commercial banks in Zambia. Its aims are basically twofold. First it seeks to establish the impact of statutory and other regulations in influencing the behaviour of Zambian banks, particularly in the making of decisions relating to branching, dispensing of the credit, savings mobilization and other services. Secondly, it seeks to discover whether or how the functions and practices of commercial banks in Zambia, including the system of regulating them, fit in with the overall strategies and objectives for economic development in the country.

Concern about the role of banks in Zambia's general economic life and the notion that regulations can be employed to place banking operations within national developmental strategies go back a long way, but can be seen more clearly from the government's actions soon after independence. In April, 1968, President Kaunda attacked the attitudes of foreign owned enterprises, including banks, saying:

The banks, the insurance companies, the building societies, the hire-purchase companies and the other commercial financial institutions have not been willing to assist the Zambian businessman".¹

1. K.D. Kaunda, Zambia's Economic Revolution, Address at Mulungushi, 19th April, 1968. Zambia Information services (ZIS); Government Printer Lusaka. P.27.

These concerns are covered in more detail in chapter four.

To counter these attitudes his government limited the borrowing ability of resident expatriates and their enterprises. The exchange control authorities were directed to treat the borrowing requirements of these groups in the same way as they did ~~and~~ those of foreign companies. The criteria they were to use in determining whether or not expatriates or expatriate owned enterprises were to obtain loans ~~were~~ to be the amount of their investment and the type of the business they operated. The authorities were also to take into account the amounts of money brought into the country by expatriate entrepreneurs before determining the amount they could be allowed to borrow. The President explained that the aim of his measures was to enable financial institutions to use their excess liquidity to assist Zambian entrepreneurs.

In 1970, while announcing his government's intention to take over the country's financial institutions, the President again made clear his and his government's disquiet about the attitudes and policies of the banks.² He was critical of their staff policies which prevented Zambian citizens from assuming managerial positions, and about the rate at which they opened new branches in rural areas, including as before, their policies towards lending to Zambians. Thus, as a follow up to the 1968 measures the President added two new ones, namely

2. K.D. Kaunda, Zambia Completes Economic Reforms: 'Now Zambia's ours', An Address by the President, 10th November, 1970.

that, his government was going to acquire 51 per cent of the shares of foreign owned banks and to merge some of them.³

But following the failure to agree with the foreign banks on the terms of the government's acquisition of some shares, the government's bid to achieve control of the banks seemed to be as far away as ever. Reluctant to go for an outright nationalization, the government chose instead to obtain a small measure of control by enacting the Banking Act, 1971.⁴ The main terms of the Act were that:

(i) only companies, locally incorporated and registered, could carry on the business of banking.

(ii) each bank was required to ensure that at least half of its directors were Zambian citizens or established residents.

(iii) all commercial banks could carry on the business of merchant banking.

(iv) every bank in which the government held all or some of the shares would be required to maintain a paid-up equity capital amounting to not less than K500,000.

(v) every bank without government participation in its equity would be required to maintain a paid-up equity capital of not less than K2 million.

3. For details see also Chapter Four.

4. No.43 of 1971, for more details see Chapter Three.

Despite government measures and regulations like those outlined in the foregoing paragraphs disillusionment with the role of banks in providing financial resources for development seems to be rising rather than abating. Thus we see in 1975, seven years after the first measures were announced, President Kaunda still indicating that more needed to be done. Speaking at the ceremony marking the opening of the new Bank of Zambia building, the President said of the Zambia National Commercial Bank:

"It is hoped that it will also be able to depart from restrictive practices of orthodox banks by spearheading the expansion of banking to semi-urban and rural areas and relaxing the traditional criteria for business credit".⁵

The implication here is that the non-Zambian owned banks continue with their discriminatory and other undesirable practises.

Similarly, the continued creation of new and different kinds of financial institutions by the government is also an indication that faith in the banking system has not yet been established. Starting with the now defunct Credit Organisation of Zambia (COZ) a chain of other institutions have come and sometimes gone. These include the Development Bank of Zambia, the Agricultural Development Bank and the Lima Bank.⁶ In

5. Speech by President K.D. Kaunda, opening ceremony, The Bank of Zambia New Building. Associated Printers 17th July 1973, P.12. See also Mbambo Siyanga, Minister of State for Legal Affairs, in Times of Zambia, March 25, 1986.

6. See also Chapters two and four for details.

addition, the government itself and sometimes the Industrial Development Corporation (INDECO) as well as the Bank of Zambia have provided credit to needy entrepreneurs and farmers. Other deposit taking financial institutions which are Zambian owned like the Zambia National Building Society, the Zambia State Insurance Corporation, the Zambia National Provident Fund (ZNPF) and other superannuation and thrift schemes have equally been persuaded to step up their lending to Zambians. All those things are signs of an unsatisfactory credit situation. It is clear therefore that several questions must be answered:

(i) why are the banks still failing to satisfy government objectives despite the enactment of legal changes?

(ii) Are there any flaws in the law?

(iii) Was the enactment of these laws the only way to achieve the governments objectives; and

(iv) what can be done?

It is to these questions that this study directs itself.

1:1. Hypothesis of the Study.

The study of banks and banking systems is not a new phenomenon. According to Mints, ⁷ "attempts in English speaking countries to explain the operations of commercial banks and other banks began with the inception of the institutions

7. L.W. Mints, A History of Banking Theory in Great Britain and the United States, (Chicago: University of Chicago Press, 1970) P.9. See also Oluwole Adewunmi, Loan Management in Nigerian Banks, (Ph.D. Dissertation, University of Wales, 1981) P.1.

themselves, that is to say, in the second half of the seventeenth century in Great Britain and in the 1870s in the United States". In developing countries, on the other hand, particularly those of Africa South of the Sahara and North of the Zambezi, research on the functions of these institutions was, until recently, minimal. When some literature began to appear it dwelt largely on such aspects as the history of banking in particular countries, including their role in financing trading relations between colonies and their mother countries.⁸ It was only in the last two decades that the role of banks as potential development agents began to receive really active attention by scholars in many less developed countries.⁹ Arriving as it did at a time when the urge for

8. See e.g. W.T. Newlyn and D.C. Rowan, Money and Banking in British Colonial Africa (London: Oxford University Press, 1954) and R.A. Sowelem, Towards Financial Independence in a Developing Country (London: Allen and Unwin, 1967) see also J.A. Henry, Sixty Years North of the Limpopo, The Story of the Coming of the Standard Bank to Rhodesia and Nyasaland (Salisbury: the Rhodesia Printing and Publishing Company, 1953), E.E. Jucker-Fleetwood, Money and Finance in Africa (London: Allen and Unwin 1964), W.F. Crick (Ed) Commonwealth Banking Systems (Oxford: Clarendon Press, 1965) and Erick L. Furness, Money and Credit in Developing Africa (London: Heinemann Educational, 1975).

9. See e.g. C.E. Bourne, 'Commercial Banks and Economics Development in Jamaica' (M. Soc. Sc. Dissertation, University of Birmingham, 1969), A.B. Taylor, 'The Role of Financial Institutions in the Economic Development of Sierra Leone' (Ph.D. Dissertation, University of Glasgow, 1972), R. Islam, 'Monetary Management, Commercial Bank Credit Expansion and Economic Development in Pakistan' (M. Sc. Dissertation, University of Lancaster, 1973), A.T. Ojo, 'Financial Sector and Economic Development, with Special Reference to the Nigerian Capital Markets' (Ph.D. Dissertation, University of Wales, 1974), and Ali Issa Abdi, Commercial Banks and Economic Development, The Experience of Eastern Africa (New York and London: Praeger Publishers, 1977). See also J.F. Onoh, Money and Banking in Africa (London, Lagos and New York: Longhorn, 1982) and Anne Seidman, Money, Banking and Public Finance in Africa. (London and New Jersey: Zed Books Ltd, 1986).

fast development occupied the centre stage in many less developed countries, such academic attention was regrettably plagued from the very start by one major flaw; namely, it was very wide and therefore tended to be short in detail. As a result, many of the studies that emerged during that time failed to analyse the full extent to which banks were involved in national development including the surrounding determinants of or deterrents to such involvement. In short, because of their nature the early works on the banks in less developed countries tended to focus more on the question; How - are the banks performing?, rather than on Why ?, they are performing that way.

Given the underlying mood of the day, which was one of urgency, it is perhaps understandable why scholars set their sights on much wider horizons in research and covered many aspects of the business of banking. Many studies covered such aspects as the emergence and expansion of banking, including savings mobilization, allocation, management and branching. It is submitted however, that by over-stretching themselves and overshadowing the question why?, many of the earlier works fell short of achieving a full exposition of the rôle of external factors such as law in determining the nature and extent of financial mobilization and allocation - the two main ways in which banks perform their function as development agents. ¹⁰

10. See P.30 below.

This study is a less ambitious one. It merely tries to elucidate the part played by one of the factors that determine levels of mobilization and allocation of resources, viz, law.

One of the consequences of a long absence of a tradition of research in the field of banking and its role in national development can be seen more than anywhere else, in the virtual absence of and adequate legal analysis on the subject.¹¹ In its place standard English and other foreign texts are heavily relied upon. By and large however, those texts merely enable third world lawyers to deal with technical matters such as incorporations of banks, banker - customer relations, negotiable instruments and other cognate transactions connected with them. None of these matters can afford these lawyers an adequate ability to comprehend and explain the socio-economic impact of banking and banking regulations or their absence on the process of development in their respective countries.

Clearly this leaves the question; why has there been a negligible amount of scholarly activity on the aspect of legal control and its impact on the functions of banks as agents for development?

11. Some of the recent works include S.K. Date-Bah, "The Legal Framework of Banking Business in Ghana", J. Alibert and J.E. Sathoud, "The Activities of Commercial Banks in French-Speaking African State", G.O. Nwankwo, Bank Lending in A Developing Economy; The Nigerian Experience; A.N. Allott; "Credit and the Law in Africa: A Special Study of some Legal Aspects of Economic Development", and H.J. Tomkins, "Comparative Table of Banking Legislation in Africa", - in 19 Journal of African Law (1975).

Two possible explanations can be raised in answer to this question. The first one is that legal thought has followed the same pattern in the less developed countries as it did for a very long time in developed countries. This means that, save for occasional allusions to legal terms and provisions by non-legal scholars, the actual prosecution of legal analysis has remained largely in the hands of lawyers. The second explanation, and one that takes a bearing from the first is that, as opposed to ordinary social science analysis, for instance, which looks at the socio-economic, political or other implications of, practices, systems, and events, legal thought in Anglo-American systems has remained largely a study of statutory provisions and cases behind the guidelines of such notions as equity, natural justice and the common law doctrine of stare decisis; or simply positivism.

The stranglehold of analytical positivism on legal thought came with the advent of the industrial revolution and the growth of the doctrine of laissez faire in the latter part of the eighteenth century. With the spread of specialization, the actions of entrepreneurs came to be dominated by the concept of contract. In correspondence to this development, the role of lawyers expanded in importance as it was they who possessed the ability to answer questions arising from such contracts. But with such concentration of effort on technical prowess and craftsmanship the lawyering process became detached from the policy making functions and considerations of the

social reformer or legislator. ¹² Law itself acquired the status of a mere practical science as it dwelt less and less on the fundamental questions of the social, political and economic functions of the social order.

For the lawyer therefore, what became paramount was the achievement of legal certainty. Without such certainty, the investment decisions of entrepreneurs who employed the lawyers would have been considered as vulnerable to risks. It was therefore the lawyer's task to advise about which set of legal alternatives generated maximum returns at minimum risks. For these reasons the 'legalism' which emerged insisted only on two things "logicality" and formal "rationality" and the "autonomy" and "supremacy" of law. In other words its concern was simply with the elegance and consistency of rules. ¹³

It was these demands on the legal profession during the rise of capitalism which found powerful support in the jurisprudence of positivism in the nineteenth century. Its main thrust was that the lawyer's functions were strictly instrumental. It was no concern of his to determine what the law ought to be, but merely to find out what it was. ¹⁴ Even

12. W. Friedmann, "The Role of Law and The Function of The Lawyer in Developing Countries", 17 Vanderbilt Law Review, 196-97 at 181. See also Robert Seidman, The State, Law and Development, (London: Croom Helm Ltd, 1978) P.32. HL

13. See David Trubek, "Max Weber on Law and Rise of Capitalism" [1972] Wisconsin Law Review 7.20.

14. Robert B. Seidman, op. cit.

today despite huge gains made by social science in legal analysis, ¹⁵ "a considerable amount of legal study still examines only the universe of legal rules, trying merely to harmonise and elucidate them so that in detail they should form a gapless web". ¹⁶

1:1:2 Positivist Influence in Underdeveloped Countries.

As positivism considered the criteria for good law to be elegance and consistency rather than its consequences for society, one of its basic theoretical elements therefore became the notion that a law that was good in one time and place would similarly be good in other times and places. Accordingly, English law, and other colonial laws were transferred to the colonies almost intact and without much regard to the socio-economic circumstances of such colonies. Apart from leaving the relations between the native peoples to be governed by their own customary rules, the colonial administrations of the various territories had no hesitation in transferring replicas of the laws and legal philosophies of the mother countries. For this reason today in Africa and many other developing

15. See PP.15-16 below.

16. Robert B. Seidman, op. cit. P.45.

countries, it is not uncommon to see laws of the metropolitan or colonial countries adopted and enforced despite the different or changed socio-economic conditions prevailing there. Robert Seidman ¹⁷ gives Professor Rene David's civil code for Ethiopia ¹⁸ as a good example of such transferred metropolitan laws. That code was largely based on the Swiss codes and had some French admixtures. Lesotho's Highway Act¹⁹ is another case in point. Virtually every aspect of it was copied from South Africa's Highway Act. Its drafters did not even omit the lorry and bridge weight regulations of its South African parent even though Lesotho itself has no weightbridges.²⁰ Other laws like those on taxation, public corporations and criminal codes fall into this category. The result of imposing metropolitan legal enactments and theories in the peripheral countries on a large scale has naturally been that the philosophy of positivism was also transferred. Accordingly, practical and academic lawyers in Africa were unknowingly apprenticed into the positivist approach and tradition, and very little analytical work occurred.

17. op. cit. P.34.

18. R. David, "A Civil Code for Ethiopia", Considerations on the codification of the Civil Law in African Countries, 37 Tulane Law Review [1962-63] 187.

19. Lesotho: Highway Traffic Act, 1972. See Robert Seidman, op. cit.

20. op. cit.

In the case of academic and other lawyers engaged in research, one has also to remember that these were in any case very few in newly independent African countries where the bulk of law graduates were siphoned off into administrative and other "urgent" government work. Such shortages of lawyers were related to the colonial policy and actions of the pre-independence days. At first the colonial authorities were very apprehensive about the consequences of training African lawyers, as their experience in India had shown that lawyers tended to lead resistance to colonial rule. They therefore took steps to prevent the emergence of any significant force of African lawyers. As a result, at independence most African countries had only a handful of lawyers or none at all. ²¹ According to Professor Ghai, there was only one African lawyer in Tanganyika in 1960 for example, and only 10 out of 300 qualified lawyers in Kenya were Africans.²² In Uganda the figures were 20 out of 150. In Zambia on the other hand, none of the country's 100 graduates at independence was a lawyer. ²³ The only two barristers, Mr. Mainza Chona and Mr. Mwanakatwe,

21. See William Twining, "Legal Education within East Africa", in East African Law Today (London: British Institute of International Comparative Law, 1966) PP.116-117.

22. Yash Ghai, Law, Development and African scholarship, 50 The Modern Law Review [1987] No.6., 750 at 752.

23. See Muna Ndulo, "Legal Education in Zambia: Pedagogical Issues", 2 Lesotho Law Journal (1986) 75 at P.79.

became Ministers in the first independence government, and could not therefore be involved in any meaningful research work. ²⁴

For reasons of inadequate number of researchers and the presence of a vast array of aspects to be covered, it is understandable therefore, why very little research occurred. The handful or so of lawyers who were engaged in research had to set priorities. Naturally, some areas such as land tenure and planning, constitutional arrangements and administration assumed the first priority. Research on such aspects as the legal order applying to the business of banking, including its impact on the role of banks in development obviously took a back seat.

1:1:2 The Decline of Positivism

It was not until the emergence of the Law and Development studies and their subsequent rejection and replacement by the Underdevelopment and Dependency theories that legal thought began to break the grip of analytical positivism and took an active and prominent position in the analysis of social, political and economic impact of the legal order. Law and Development together with the Dependency and Underdevelopment theories were themselves not a revolutionary

²⁴. In any event the training of a barrister in an Inn of Court could not seriously equip him with the necessary skills to understand African legal systems, legal scholarship and research. See e.g. Yash Ghai, op. cit. at P.752

system of analysis.²⁵ They drew heavily on the then dominant social science theory of modernisation.

A variety of forces worked to produce the shift depicted above. The initial impact came from the rising influence of America's economic and military power which, aside from restoring Western Europe's manufacturing and trading industries also unleashed a change of attitude towards protectionism, colonialism and deprivation through underdevelopment. The theory of modernisation which this shift produced sought to transform the world's underdeveloped regions into replicas of the developed western countries by prescribing a wholesale adoption of western social, economic and legal systems. The failure of that theory to take the particular peculiarities of these regions into account however, led to its failure and challenge.

Apart from the influence of America, scholars like Francis Snyder and others have identified, among other things, the rising tide of and influence of the marxist ideology as being significant to the appearance of modernisation theory.²⁶

25. John H. Merryman, "Comparative Law and Social Change: On the origins, style, decline and revival of Law and Development", 25 American Journal of Comparative Law [1977] 457.

26. See Francis G. Snyder, "Law and Development in the light of Dependency Theory", 14 Law and Society, (1980) 723 at 726-731. See also David M. Trubek, "Towards a Social Theory of Law; An Essay on the Study of Law and Development", 82 Yale Law Journal, (1972-73), 1 and Immanuel Wallerstein, The Capitalist World Economy, (Cambridge: Cambridge University Press and Paris: Editions de la Maison des Sciences de l'Homme, (1979) P.154.

Other factors were the adoption of the principles enshrined in the United Nations Charter, the recovery of the Soviet Union and the success of the Chinese revolution, including the ensuing post war international tensions. These latter factors provoked a further focus on the condition of the third world countries and also offered an opportunity and possibility of an alternative development process.

Most importantly however, the inability of positivist economic theories to explain the differences among national economies led to a concern for "non-economic factors" in development. It compelled even western social scientists to draw on other concepts especially those of classical sociology to explain social change, evolution and progress. In the ensuing inferno of analytical research and scholarly activity a lot has been revealed about banks, banking relations and the prudential and legal aspects of their control.²⁷ In Zambia however, aside from J.B. Zulu and N.A. Mujumudar's work on monetary policy and banking functions in the country,²⁸ and

27. See e.g. G.O. Nwankwo, "Indigenisation of Nigerian Banking", Bankers' Magazine, July 1972, and, "British Overseas Banks in Developing Countries", Institute of Bankers' Journal, June 1972. See also supra note 9.

28. See J.B. Zulu and N.A. Mujumudar, Money, Banking and Economic Development in Zambia (Lusaka: Bank of Zambia, 1970).

Situmbeko Musokotwane's recent study on the role of financial intermediaries in national growth, ²⁹ virtually nothing else has been written about banks generally and especially about the impact of legal controls over their role as development agents.

It is against the background of inadequate attention paid to the role of legal factors in discussing the functions of commercial banks in development that this study is undertaken. As with others who have studied the functions of commercial banks in developed and less developed countries, this study is a reflection of the significance of economic factors in the development of countries. The relevance of banks to the economies of less developed countries is in fact further underscored by these countries' advocacy of strong mixed economic systems. ³⁰ When an economic system is mixed the role assigned to the private sector and especially to the financial institutions is usually a large one. In addition, the size of

29. Situmbeko Musokotwane, Financial Institutions and Economic Development in Zambia (Dissertation Zur erlangung des akademischen Grades eines Doktors der Wirtschaftswissenschaften an der Universität Konstanz. June 1985.) (Written in English).

30. See K.D. Kaunda, "Humanism in Zambia and a guide to its Implementation" Part II (Zambia Information Service, Government Printer 1967) see also Oluwole Adewunmi, *supra* note 7 at P.5.

banking sector in the economies of most developing countries places them in a unique position in relation to the other sectors or institutions. Thus, as opposed to developed countries where such institutions as brokers, stock exchanges, merchant bankers, Giro banks, building societies, insurance houses etc, are present on a vast scale, there are not many institutions in developing countries which surpass banks in importance. Even if a few of the institutions mentioned above may be present, banks in developing countries constitute the single most important mechanism for transferring resources and intermediation.³¹ They also account for the biggest portion of the money supply in the form of demand deposits. In addition to these vital functions, banks in these countries have to perform the traditional functions of implementing national monetary policies and conducting foreign exchange payments or simply assisting in the administration of their countries' balance of payments and reserves.

In Zambia the immense potential of commercial banks to finance development is highlighted by the large numbers and sizes of their portfolios. Although they get competition from a few other deposit taking institutions like the National Savings and Credit Bank (formerly the Post Office Savings Bank), the

31. U Tan Wai, Financial Intermediaries and National Savings in Developing Countries (New York and London: Praeger Publishers 1972) P.30. see also Richard L. Kitchen, Finance for Developing Countries (New York: John Wiley and Sons, 1986) and Bereket A. Habte Selaissie, "Development Lending and Institution Building", 19 Journal of African Law (1975) 118-133

Zambia State Insurance Corporation, the Zambia National Building Society, the Zambia National Provident Fund and other superannuation or thrift schemes, ³² commercial banks are nevertheless still the dominant savings institutions even numerically. In 1982, for instance, their assets stood at K2.3 billion as compared to K136,666,000 for the Zambia National Building Society and K35,004,000 for the National Savings and Credit Bank. ³³ Thus even conceding that their ability to pour more and more resources into development is being challenged by these other intermediaries and those mentioned earlier which were set up specifically to rectify the unsatisfied credit situation, the banks are nevertheless in a far stronger position. Therefore in the light of their obvious potential ability to provide financial resources for development, the failure of the banks to meet expectations requires an explanation. This work is an attempt to do so.

1:1:3 Banks as Development Agents

Development is a process of change from a state underdevelop-

32. See Chapter 3. For details on the advantages of banking intermediation over other financial institutions see Charles H. Schmidt and Eleanor J. Stockwell, "The Changing Importance of Institutional Investors in The American Capital Market", 17 Law and Contemporary Problems (1952) 3-25 at P.15.

33. See Bank of Zambia, Report and Statement of Accounts for the Year Ended December 31st 1982.

ment to better conditions of life. ³⁴ Although there is no universally sanctioned formula for solving the problem of underdevelopment, owing largely to the different approaches and priorities amongst different countries, several guiding values are common to all. These are that national development must find expression in increased per capita income, fair distribution of resources through, for instance, better health and education and increased employment. ³⁵

Any development needs institutions that meet its requirements. These can ~~be~~ be development banks, international development agencies such as the World Bank, IMF or foreign investors. They can also be local institutions such as commercial banks. Commercial banks perform this function by bringing lenders and borrowers together and reconciling their conflicting objectives. In other words, they mobilise or receive savings from depositors and in turn lend them out to investors. They can also invest in projects in their own right.

The notion that financial intermediation is a necessary condition for, at least, the capitalist or mixed forms of economic development has been in existence for a long time. In

34. For a fuller definition of Development see A.N. Agarwala and S.P. Singh (eds) The Economics of Underdevelopment (New York: Oxford University Press, 1963) PP.12-15 and Nancy Buster (ed), Measuring Development, The Role and Adequacy of Development Indicators (London: Frank Cass, 1972) P.1-3.

35. D. Seers, "The Meaning of Development, 2 International Development Review", (1969) see also Robert Seidman, op. cit. P.55.

1934, Joseph Schumpeter, perhaps the earliest advocate of this theory, asserted in a seminal work that for an economy to develop, two conditions need to be present; financial institutions and entrepreneurship.³⁶ Although some dissenting views have since appeared, many other proponents of Schumpeter's views have emerged. The one who came closest to Schumpeter was Raymond Goldsmith. In a work involving a study of 35 developed and developing countries he compared the relative financial development and the relative real (or actual) development of each country. He also calculated each country's financial interrelations ratio (the ratio of financial instruments to real wealth) and found that a high financial structure development, defined by a high financial interrelations ratio, tended to correspond to a high real development, implying that financial intermediation is a prerequisite for or must go simultaneously with real development.³⁷

In a different series of studies in 1972 covering several developed and developing countries, Rondo Cameron and others also concluded that financial institutions are an essential corollary of economic development.³⁸ They postulated the functions of a banking system to be (i) intermediation (ii) to furnish part or all of the means of payment or money supply,

36. Joseph A. Schumpeter, The Theory of Economic Development (Cambridge Mass: Harvard University Press, 1934).

37. R.W. Goldsmith, Financial Structure and Development, (New Haven: Yale University Press, 1969) PP.390-408. See also Oluwole Adewunmi, op. cit. P.24.

38. Rondo Cameron (Ed), Banking and Economic Development; some Lessons of History (London: Oxford University Press, 1972) P.5.

and (iii) the provision of entrepreneurial talent and guidance for the economy as a whole. According to Cameron:

"The way in which banks perform these functions may well determine the degree of success of the development effort. As intermediaries they may vigorously seek out and attract reservoirs of idle funds which will be allocated to entrepreneurs for investment in projects with a high rate of social return or they may listlessly exploit their quasi-monopolistic position and fritter away investment possibilities with unproductive loans".³⁹

A few micro-level studies about the role of banks in the development of small communities similarly yielded much the same findings. Two such studies were conducted in the United States in the 1970's. The first one by J.A. Griggs looked at the role of banks and bank management strategies in general economic growth in Texas.⁴⁰ He concluded that active bank lending to small scale and new businessmen was absolutely vital in small population business areas. The second study was done in Philadelphia during 1975 by C.A.C. Greenberg and reached much the same conclusion.⁴¹

Studies like these, particularly those which were published, inspired some people in some third world countries to initiate similar research with a view to establishing the applicability of the theory that banks are development agents

39. Ibid.

40. J.A. Griggs, 'The Commercial Banker and Industrial Entrepreneurship: The Lending Officers' Propensity to Make Loans to New and Different Companies' (Ph.D. Dissertation, University of Texas at Austin, 1971) cited in Oluwole Adewunmi, op. cit. at P.27.

41. C.A.C. Greenberg, 'The Role of Commercial Banking in Regional Economic Development - Philadelphia, 1945-1970' (Ph.D. Dissertation, University of Pennsylvania, 1975) Cited in Oluwole Adewunmi, op. cit.

to their own countries. Not surprisingly, many of the new researchers were postgraduate students who went to school in western countries ⁴², a pattern which tends to vindicate the earlier contention that interest in these studies in less developed countries is of very recent origin. ⁴³ Virtually all the researchers involved in these studies in third world countries urged that there was sufficient evidence to support the theory that financial intermediation was as necessary to the development of their countries as it was to that of the developed countries. Many of the studies singled out the following as being the most appropriate functions of financial institutions in third world countries:

- (i) the mobilisation of domestic resources.
- (ii) in dealing with the problems of securities for loans and the special problem of lending to a large number of small operators in the agricultural and small-scale industries sector; and
- (iii) in the improvement of the quality of investment so as to increase the productive capacity of the economy.

42. See e.g. Note 9 above.

43. See PP. 6 - 5 above.

As indicated already, despite a wide acceptance of the notion that a correlation exists between financial intermediation and economic growth, the debate over the degree to which the relevance of banks and other financial institutions must be emphasised has not abated. There are differences within the camp of the theory's proponents between those who see the causal link between intermediation and development as direct, and those who see it as indirect. The principal proponent of the direct link thesis is Milton Friedman, who for many years now has been the leader of the Monetarist School. His earliest analyses were largely based on the industrial index for the U.S. Time Series programme. ⁴⁴

The theory that the causal link between financial intermediation and growth is indirect, on the other hand, arises from Hugh Patrick's two track approach. In his 1966 paper he urged that the role of the financial institutions in the process of development is either passive or one of mere reaction to the demands of the real sector for financial services. ⁴⁵ He called this the "demand-following Finance"

44. Milton Friedman, 'The Monetary Studies of the National Bureau' The Optimum Quality of Money and Other Essays, Chicago, 1969.

45. Hugh T. Patrick, "Financial Development and Economic Growth in Underdeveloped Countries", ¹⁴ Economic Development and Cultural Change. (1966) 174-189.

situation. To support his claim he adduced the evidence of the history of financial intermediation in England, which he said indicated that a financial system need not always be actively involved in the country's development process or real growth.⁴⁶

The rest of Patrick's theme however, was devoted to the direct causality theory. He postulated that the financial system can be said to be directly responsible for the growth of the real sector by positively and actively devising and providing financial services for the real sector in anticipation of demand for them. He called this the "supply-leading demand" situation. For support he pointed to Germany and Japan where financial institutions have been involved not only as bankers but also as entrepreneurs.⁴⁷

Apart from the differences among those who see at least some causality between financial intermediation and development, there were others who hold that the financial system is not at all a necessary condition for development. The people on this extreme include J.G. Gurley, who after a study of the development processes of some third world countries as well as socialist ones concluded that the thesis that financial institutions constituted a necessary condition

46. Ibid at P.175.

47. Ibid 176-178.

for development was inaccurate. ⁴⁸ Pointing to some successes in the countries that he studied, he contended that there are alternatives to financial intermediation, such as planning and taxation. His supporters subsequently attacked the mainstream theorists for ignoring cultural and political factors in their theories about the process of development. ⁴⁹ Others posited that, in reality, capital stocks merely accounted for about a third of all the realised increases in output in advanced countries such as the United States. The other two thirds, they said is accounted for by what they called "residual-factors. ⁵⁰

By and large, the advocates of the view that there are alternatives to financial intermediation have a point. This however, should not conceal the fact that many of them are ignoring the fact that credit as a concept applies to all economic systems; whether capitalist or socialist, planned or free. ⁵¹ The basic difference stems from the aspects of central

48. J.G. Gurley, "Financial Structure in Developing Economies", in David Krivine (ed) Fiscal and Monetary Problems in Developing States: Proceedings of the Third Rehovoth Conference (New York: Praeger Publishers, 1967) PP.99-116.

49. See L.N. Raj, The Role of Saving in Economic Development and Alternative Strategies for Raising its Level; In Planning Domestic and External Resources for Investment; Report of the Second International Seminar on Development Planning (Amsterdam, Netherlands) 19-30 September 1966 (New York: United Nations, 1969) P.41.

50. Ibid.

51. See e.g. Gyula Eorsi and Attila Hamathy (eds) Law and Economic Reform in Socialist Countries (Akademiai, Kiado, Budapest, 1971) P.223, O. Kuschipeta, The Banking and Credit System of the U.S.S.R. (Leiden/Boston: Martinus Nijhoff Social Sciences Division, 1978) and George Garvq, Money, Banking and Credit in Eastern Europe (Federal Reserve Bank of New York, 1966)

control and planning itself which prevail in socialist countries while capitalist systems leave the allocation of credit to the markets themselves. Sven Viig put these facts thus:

"The basic principles of monetary and credit policy are common to all nations whether socialist or capitalist, developing or industrial" 52

Adding also that:

"even in a centrally controlled, closed economy the general rules governing money and credit policy have to be observed. If the supply exceeds the amount necessary to transact normal business inflationary pressure inevitably develops with disturbing effects on what market mechanism there is, and the currency becomes unsuited as a yard stick of value" 53

In the light of these facts, to dismiss financial intermediation as an irrelevant factor for development is to ignore reality.

In addition, Raj himself has admitted that the notion that capital accumulation and financial intermediation are important conditions for the development process cannot be discounted solely on the ground that large variations exist in the incremental capital output ratio of the different countries as some people had done. Nor is it adequate to discuss it by saying that increases in capital stock account for only a part.

52. Sven Viig, "Monetary Credit Policy and The Commercial Banks", in Monetary and Credit Policy and The Banking Community, Lectures delivered at the Nineteenth International Banking Summer School, Bergen Norway - June 1966 (Oslo: The Norwegian Banker's Association, 1966) P.23.

53. Ibid P.24.

of the realised increases in output in any one country. Both these arguments ignore the fact that there are wide differences in the basic resource endowments between countries, which might compel countries that are poorly endowed to require higher rates of capital formation than others to achieve the same rates of growth. Furthermore, there are also differences in the degree of utilization of capital owing mainly to differences in demand or to the existence of bottlenecks. 54

Moreover, even if the importance of the "residual-factors" is conceded, it might be the case that additions to the capital stock are a necessary condition for their becoming effective. Indeed it is impossible to expect that technical progress can be attained on its own without some form of investment. Even improvements in organisation and skill gained through "learning by doing", are often crucially dependent on the rate at which capital is accumulated.

It is also important to recognise that even though they highlight the importance of the "residual factors" in the development process, Gurley and his supporters also admit that --complementary factors, especially capital accumulation are vital for the process to succeed. Thus as Adewunmi Observes:

"though differing substantially with the hitherto established view, Gurley nevertheless admits that financial institutions might be prominent contributors

54. This point is discussed further at P.33

to development where there is decentralization of decision making, specialization of savings and heavy emphasis on external rather than internal financing of investments, which are factors of capitalist economic systems".⁵⁵

With regard to the use of alternatives to intermediation, it is obvious that governments cannot simply abandon their cherished aims of achieving mixed economic systems (which accommodate banks and other financial institutions in the manner which Gurley has stated above) without losing people's trust. After all alternatives like taxation are not only politically explosive, but also humanly impossible to achieve given the abysmally low levels of income in many developing countries, including those which follow this alternative.⁵⁶ More over, in the case of corporate taxation, for it to be effective, it requires comprehensive and accurate disclosures of financial and operational information by companies to the tax authorities. Such disclosures will in turn enable the authorities to assess the taxable income. But in some developing countries, company codes are deficient on the rules of disclosure.⁵⁷ The Zambian Companies Act is a typical

55. Oluwole Adewunmi, op. cit. P.25.

56. In Zambia, for instance, only about 391,000 of the country's labour force of well over 1,880,400 are in paid employment. See Ministry of Labour and Social Services, Annual Report for the year 1982 (Lusaka, 1984) and Evance Kalula, The Influence of International Labour Standards on Zambian Legislation, 124, International Labour Review, (No.5 September - October 1985) 593.

57. David A. Ailola, Foreign Investment: The Law and Policy in Zambia (LL.M Dissertation, University of Zambia, 1983) P.92.

example. It does not require domestic companies even to submit annual returns, profit and loss accounts, balance sheets or director's reports. As a result it is obviously impossible for the tax department to accurately assess corporate taxes. In the case of foreign companies, the only significant requirement on them for tax purpose is that they should submit audited balance sheets, though these need not include statements of profit and loss.⁵⁸ It is also well known that the efficiency of any tax system is not just a matter of appropriate laws, it depends on the efficiency and integrity of the tax administration. Unfortunately for many developing countries, by reason of their inability to secure skilled and experienced personnel, efficiency and integrity are sometimes missing or compromised. In the face of all these obstacles, a banking system, because it already exists in most countries, is better placed to play a major role in the mobilization and allocation of resources.

1:1:4 Importance of Savings and Credit

Of all the numerous functions of commercial banks, savings mobilization and lending are the genesis of their operations. In other words, they are the main ways in which the development process can be affected by the banking system.⁵⁹

58. CAP 686 Section 226(3).

59. See e.g. Ali Issa Abdi, *supra* note 9.

Accordingly, in measuring the impact of legislative and prudential regulations, emphasis should largely be placed on these factors. Mobilization is important because without it banks cannot have the resources to lend. With regard to loans and advances these are by far the largest single item in the asset structures of Zambian commercial banks. Lending also deserves the special attention offered by this kind of study because commercial banking in Zambia is basically a successful profit making business and loans and advances are its most essential assets. At the same time these items are the most risky of all banking portfolios. Indeed in no facet of its operations can a bank suffer more losses as quickly as it can on its commercial lending operations.⁶⁰ It is for this reason that this study seeks to examine the role of the legal order in Zambia in enhancing the banks' ability to aid national development by offering adequate protection to banks on their loans. It is important in this respect to remember that banks use other people's money to do business and as such they require the backing of those people's confidence. While other factors such as adequate security or collateral and interest may help to create such confidence, it is submitted that the knowledge by banks that they also command the support of legal provisions is of added, if not primary importance.

60. R.H. Behnen, Commercial Problem Loans (Boston: Bank's Publishing Company, 1979) P.5.

Lending is also important from a different angle. It is healthy for the banking business itself as new loans tend to generate more deposits. ⁶¹ It also leads to closer and continuing contacts between banks and their customers which are also instrumental in the broadening of the market for other bank services. ⁶² Thus from the self interest point of view, lending is as important to bankers as it is to economic growth.

It is not easy in a legal study to measure the efficiency of the savings mobilization and credit allocation functions of commercial banks. This work will therefore avoid dwelling too much on the technical details relating to such processes. But wherever feasible, it will adopt the commonly used approach of analysing the relations between bank deposits and money supply and liabilities and GNP. ⁶³ It will also examine the extent to which bank loans and advances are allocated to priority sectors as well as ~~that~~ of rural branching.

61. See e.g. T.M. Robertson, 'Bank Asset Management Model', in S. Eslon and T.R. Fowkes, Applications of Management Science in Banking and Finance, (Epping Essex: Gower Press, 1974); and S.P. Bradley and D.B. Crane, Management of Bank Portfolios (London: John Wiley and Sons, 1975).

62. E.N. Rollssakis, Managing Commercial Bank Funds (New York and London: Praeger Publishers, 1977).

63. See Oluwole Adewunmi, op. cit. P.37, see also Ali Issa Abdi op. cit.

1:2 Obstacles to Efficient Intermediation

Having illustrated the potential of commercial banks and the significant role they can play in providing financial resources for national development, it is now time to explain why these tasks are sometimes not carried out. There are a number of obstacles to efficient intermediation, particularly in developing countries. Some of these obstacles are that, when seeking avenues for the employment of their funds, banks generally set their sights and priorities too high. They seek mainly those enterprises or persons who can offer the highest rates of profit and which are not susceptible to the risks of non-payment. They also look for avenues which do not involve excessive costs in administration. As stated already, the fact that banks deal with other people's money justifies such cautiousness. However, it begins to raise concern when it exceeds reasonable business prudence and begins to starve genuine entrepreneurs constituting one racial group of capital resources.

Another obstacle to the efficient involvement of banks in the development process of developing countries is their tendency to borrow some of the practices and traditions of foreign banking systems which have no relevance to the environments they are operating in. In operational terms this involves the practice of preferring only those entrepreneurs who can offer certain types of security for bank loans. By adopting such stringent practices in developing countries,

entrepreneurs lack the type of securities that are traditionally accepted by foreign banks, third world banks are in effect limiting the flow of much needed financial resources. They are also engaging in the already mentioned, but undesirable practice of discriminating against indigenous persons who need loans to pursue their trades as small scale industrial artisans or farmers.

The discrimination against indigenous small scale industrialists and farmers has been explained and justified on two grounds. First, the requirements of these groups are usually modest. To most bankers, modest requirements are unacceptably expensive to monitor. Therefore, where they are not rejected outright, the tendency has been to raise the rates of interest and administrative costs relating to them.

Secondly, banks discriminate against indigenous entrepreneurs because they perceive them as possessing low entrepreneurial abilities. Aside from seeing these entrepreneurs as part of a huge group of ignorant people, lacking in business acumen and expertise, the foreign oriented bankers of the third world also object to such practices as the extended family system which requires entrepreneurs to use some of their profits to support their less fortunate relatives. ⁶⁴

64. See e.g. Ronald Robinson, "Capital and Enterprise", In Ronald Robinson (ed) Industrialization in Developing Countries; Impressions and Papers of the Cambridge Conference on The Role of Industrialization in Development, 6-19 September, 1964 at Kings College Cambridge at P.33.

In addition banks consider the impact of market imperfections which come with price controls and other restrictive trade policies on people's ability to repay their loans before they make any commitments. ⁶⁵ As a result of all these factors the flow of credit in many third world countries is severely flawed, as loans tend to go mainly to large scale industries and expatriate or immigrant entrepreneurs. No doubt, these considerations by banks which look at groups not individuals are themselves flawed and need to be revised.

Aside from the foregoing, the biggest obstacles to efficient bank lending or savings mobilization, however, may arise from certain inadequacies in the legal system itself. A legal system may be inadequate in so far as it fails to create the conditions necessary for a meaningful involvement of the banking system in the development process. In other words, it may fail to integrate the banking system into the national economy, either by systematically ignoring to acquire a degree of national ownership or control over banks or their management, or by providing a dubious one. It may also fail to provide the necessary incentives for efficient lending such as a clear and proper machinery for enforcing repayments without delay or extra expense, a functioning system of land

65. R.J. Bhatia and D.R. Khatkhate, "Financial Intermediation and Savings mobilization and Entrepreneurial Development: The African Experience" 22 IMF Staff Papers (1975) 132 at .135.

registration and tenure, plus an improvisation of other forms of security relative to the environment and conditions prevailing in a particular country.

Alternatively, the legal system may introduce conditions which are repressive and not conducive to proper savings mobilization and lending. As Schmidt and Stockwell postulated in 1952:

"investment or capital market activities of institutional investors are largely determined by their functions, the statutory and supervisory restriction to which they are subject and the extent of their liabilities".⁶⁶

More recently Edward Shaw⁶⁷ and Ronald Mckinnon⁶⁸, have argued that some government regulations have a repressive effect on the ability of banks and other institutions to mobilise and allocate savings. They do this by disrupting the mechanisms used to fix prices and interest rates. As a result

66. See "The Changing Importance of Institutional Investors in The American Capital Markets" Supra note 32; at P.10 (emphasis not in original).

67. Edward S. Shaw, Financial Deepening in Economic Development (New York: Oxford University Press, 1973).

68. Ronald I. Mckinnon, "Financial Policies", in John Cody, Helen Hughes and David Wall (Eds); Policies for Industrial Progress in Developing Countries (World Bank: Oxford University Press, 1980), see also Ronald I Mckinnon, Money and Capital in Economic Development, (Washington D.C.: Brookings Institute, 1973), see also Anthony S. Courakis, "Constraints on Bank Choices and Financial Repression in Less Developed Countries" 46 Oxford Bulletin of Economics and Statistics (Vol.4 1984) 341

the levels of savings generated and loans given tend to be very limited. Such measures may also lead to certain sectors being deprived of the much needed banking services as well as to the entrenchment of a subsistence economy which now exists side by side with a modern industrial economy, or simply to a situation of "financial dualism".

Some of the repressive measures come in the form of ceilings on the rates of interest for loans as well as deposits. In some countries religious teachings and political philosophies have led directly to the repression of usury. In others it is considered immoral to charge public enterprises the same rates of interest as private investors. In the absence of ceilings, repressions may take the form of mandatory preferential interest rates which favour certain groups or industries over others. The use of repressive reserve requirements as a form of monetary control is another method. This has the effect of withholding potentially investible or loanable funds from the market and locking them up in central banks where they may be used for government budgetary purposes. Apart from these effects, some regulations lead to credit rationing, nepotism in credit allocations and black marketeering. 69 They also inhibit economic flexibility by

69. Ronald I Mckinnon, "Financial Policies" Ibid P.104. see also Susan Hickok and Clive A. Gray, "Capital Market Controls and Credit Rationing in Mali and Senegal" 19 Journal of Modern African Studies (1981) P.59.

favouring large firms over small and new firms, including those introducing new technologies or management systems.

The thesis of Shaw and Mckinnon has been attacked for several reasons. First it is seen as a thesis based entirely on empirical evidence from advanced countries which the authors have attempted to import into the operations of third world economies without any qualification or consideration for the different circumstances obtaining there. According to Oluwole Adewunmi the main criticism of that thesis is that, "it fails to recognise that financial environments of the third world countries are far from being perfectly competitive".⁷⁰ In fact one can go so far as to argue that, in so far as it states that the re-alignment of interest rates alone can wipe out financial dualism, the thesis is a misconception of the framework and conditions under which both intermediation and investment take place in developing countries. Many other things, including the types of industries which are promoted or capable of being promoted and the grounds for promoting them cannot be overlooked.

70. op. cit. P.34. Suffice it to add that in the 1980 work Mckinnon did in fact include evidence from some developing countries. In addition it would be wrong to assume that any market can be perfectly competitive.

It can also be argued that it is unrealistic to dismiss the use of government regulations to control financial institutions in the developing countries as even in the more developed market economy countries such regulations are undertaken from time to time. Furthermore, as credit is central to economic activity ⁷¹ and therefore to political stability, no government can be expected to leave it entirely to the whims of the market forces which may favour only a few entrepreneurs. In developing countries where imperfections in financial and other markets are more pronounced, the need for government regulations of some sort is therefore even greater. ⁷² Therefore aside from these weaknesses the financial repression theory is undoubtedly relevant to the study of the role of legal controls in the banking systems of developing countries. With leaderships that tend to be far less competent and generally repressive in every manner, a focus on the rationality and practicability of some or all of the regulations is indeed necessary.

71. See P.26 above.

72. See also A.N. Allott, "Legal Development and Economic Growth in Africa", in J.N.D. Anderson (ed) Changing Law in Developing Countries (London: George Allen and Unwin Ltd, 1963) P.206. and A.N. Allott, credit and The Law in Africa: A special study of some Legal Aspects of Economic Development 19 Journal of African Law [1975] 73 at P.78. See also Margaret Rogers and A.N. Allott, Introduction and Report of proceedings; International conference on Banking Law and Development in Africa, 19 Journal of African Law P.7.

1:3 Objectives of this Study.

The primary aim of this study is to answer the question whether Zambia's legal order, in so far as it applies to commercial banks, is in accord with the thesis that these institutions constitute one of the necessary conditions for economic change and development. The decision to focus principally on the regulatory aspects of the legal order in relation to the role of commercial banks in Zambia is motivated by two reasons. The first one is to lend support to the theme that regulations, as well as other factors, can create obstacles to the efficient mobilization and allocation of resources by banks and other financial intermediaries. As seen there is now wide spread support for the argument that legal controls and regulations of the commercial banks have a bearing on the exercise of their functions as development agents. The second motivation is to establish how Zambian law relating to banks is capable of leading to a realisation of the government's objectives. It has become settled that law has a social engineering function which transcends the bounds of conflict amelioration to become a vehicle through which social policies become social actions.⁷³ Its power to create stability and predictability is equally crucial for development. As Rostov notes:

73. See Robert B. Seidman, "Law and Economic Development in Independent English-Speaking, Sub-Sahara Africa", [1966] Wisconsin Law Review, 999, 1027.

"That law and economics interpenetrate each other is apparent...if only from the fact that much of the very vocabulary of economics (property, corporations, credit, taxation, patents, etc) is essentially legal in nature. More basically however, law penetrates the very foundations of economics for it is by means of legal institutions that prices are in fact agreed upon, wages in fact set, business organisations in fact joined and so forth. A theory of perfect competition assumes the existence of a system of contract law. A theory of socialist economics assumes the existence of a system of administrative law".⁷⁴

Nyhart adds to this by asserting that if government activity in economic planning and implementation is to increase more reliance must be placed on law and legislation.⁷⁵ In more recent years the role of law in development has begun to be perceived in a variety of other ways. Paul Brietzke, for instance, expresses the same idea as follows:

"An examination of law's effect on development is hindered by an inability to trace the causal relationship between existing laws and society, owing to a lack of administrative data. We do know however, that individual choice is legally regulated by positive and negative sanctions, the former rewards, encouraging more creative pursuit of development".⁷⁶

He adds:

74. See Rostove, The Sovereign Prerogative, PP.13-14 and Bernerman, The Nature and Functions of Law PP.8-9, Cited by J.D. Nyhart, The Role of Law in Economic Development, The Sudan Law Journal and Reports [1962] PP.394 at P.395.

75. See J.D. Nyhart, "The Role of Law in Economic Development", The Sudan Law Journal and Reports, (1962) 394 at 396. For the notion that government vigilance or action is necessary to development in underdeveloped countries see A.A. Fatouros, Government Guarantees to Private Foreign Investors (New York: Columbia University Press, 1962) P.35. See also Charles Harvey. The Economy of Sub-Saharan Africa: A Critique of The World Bank's Report, in Africa Contemporary Record (Annual Survey and Documents Vol.KVI 1981-82.)

76. "Law and Rural Development in Africa with Emphasis on Malawi", 5 Zambia Law Journal (1973) 1 at P.9.

"Since law can be used to define rights and duties, it can be used to influence behaviour and indirectly the content of social structure".⁷⁷

Allott also outlines a few other ways in which law can induce economic development. These are: ⁷⁸

(i) in the introduction of new economic arrangements.

(ii) in the stimulation or inhibition of economic activity as where the absence of legislation on bankruptcy restricts the supply of credit.

Quite clearly the theme of this study emanates from the conviction that banks have a large role to play in the economic development of a country like Zambia which operates a mixed economic system, and that this role can be retarded by among other things repressive regulations or non-regulations. It is possible for a critic to say that the study assumes that law is the basis of economic development. The answer to such a criticism is that there can be no denying that the content of the legal system is dictated by its function, which is to help sustain an economy of a particular kind. This is a truism which even socialist scholars openly accept. Thus as Cohen asserts:

"Montaux's remarks nicely complement Marx's thesis that although economic changes have usually to be registered

77. Ibid. P.10.

78. Supra note 72 at P.73.

juridically, the law does not explain the economic changes. Revolutions are not made by laws. But it is essential that they make laws, since...bases need super structures".⁷⁹

He adds at Page 231 that:

"In human society might frequently requires right in order to operate or even to be constituted. Might without right may be impossible, inefficient, or unstable. Powers over productive forces are a case in point. Their exercise is less secure when it is not legal. So, for efficiency and good order, production relations require the sanction of property relations. Hence men fight, successfully, to change the law so that it will legitimate powers they either have or perceive to be within their grasp, and law makers alter the law to relieve actual or potential strain between it and the economy".

This study therefore will examine the regulative mechanisms available in Zambia over commercial banks to assess their suitability for minimising any obstacles to efficient mobilisation and allocation of financial resources. To achieve this purpose it has to diverge from the old style positivist approach which emphasised traditional areas such as banker-customer relations and negotiable instruments over ownership, management and policy. It is rather to these later areas and to prudential regulation, capitalisation and securities that this study will look.

1:4 Scope and Limitations of the Study

This study is divided into seven chapters. After this introductory chapter, chapter two gives a historical outline of

79. G.A. Cohen, Karl Marx's Theory of History; A defence. (Oxford: Clarendon Press, 1978) P.230.

the emergence and growth of the banking industry in Zambia from the colonial times to the present. It also touches on the factors of capitalisation and branching. In chapter three, the study looks at the methods and apparatus of regulating the banking industry in Zambia.

In chapter four, the study will look at the economic framework and direction of the country. The chapter like the rest of the study outlines a long sequence of policies and actions aimed at promoting credit and investment in the country during the pre-independence days as well as the post-independence period. It is due to the absence of similar research in the field of banking regulation and in the role of banking in development, and because some of the policies and regulations that shape today's banking business are themselves a carry over from the colonial past, that the study takes this historical approach. The chapter in addition highlights the need for vigorous intermediation by banks.

Chapter five is concerned with the analysis of the actual role played by banks in intermediating between savers and investors. It also refers to some of the changes cause in this role caused by changes in policy and regulations. In chapter six the study appraises the statutory and prudential regulations and their impact on intermediation and development in particular. The chapter also recommends certain changes and

improvements that ought to be made. The work ends with a summary and concluding remarks.

1:5 Data Collection and Methodology

The orientation of this study is both positive and normative. It is positive in the sense that it attempts to identify existing and old savings mobilization and lending practices of commercial banks in Zambia and the regulative mechanisms by which those practices are controlled. This approach is motivated by the need to answer the question whether the levels of mobilization and lending as well as the manner in which banks are regulated are adequate to induce a developmental impact. In other words, it provides the answer to the question how and why the commercial banks are functioning in Zambia?

The study is normative to the extent that it is also policy oriented, that is it attempts to answer the question what ought to be?

Several ways were used to acquire the materials and data that brought this study into shape:

(i) use of primary materials. This involved a search for and in official publications such as Statutes, Statutory instruments, commands, Registers, Circulars, government plans, ministerial reports and reviews. Others are royal commission reports,

reports of commissions of inquiry, United Nations, World Bank and International Monetary Fund (IMF)

(ii) Research in secondary sources such as National Archives in Lusaka, published books and unpublished dissertations, articles in journals and monographs.

(iii) Personal observations and interviews with experts and officials in banks and government officers. Many of these observations and interviews may not be reflected in the actual body of this study but their assistance in helping me to understand the subject and the workings of the banking system and its regulation is invaluable.

Finally, this work represents a scheme of analysis that involves references to historical, political, social and economic factors in all the important segments of this study namely, mobilisation, allocation of resources by commercial banks and in their regulation.

CHAPTER TWO

EMERGENCE AND EXPANSION OF THE BANKING BUSINESS

IN PRE AND POST INDEPENDENCE ZAMBIA

2:0 INTRODUCTION

It is not known whether there existed any kind of traditional or customary institutions in Zambia (or Northern Rhodesia as it was known during colonial rule) before the introduction of modern banking. In West Africa, the concept of banking was not entirely unknown. Before formal banking institutions were introduced, mutual aid and credit schemes of various types existed there. Some of those schemes were known as associations of men or women. Others were associations of friends. Through those associations traditional currencies like cowries, beads and other durable commodities were transferred from surplus to deficit economic units. What brought them closest to modern banking was the practice of charging interest. ¹ When the colonial system was introduced in West Africa the significance of the traditional credit schemes began to wane and their main function shifted largely to supplying funds for the education of family or group members' children and agricultural requirements. The other ones soon became the responsibility of ordinary commercial banks which came with

1. J.K. Onoh, Money and Banking in Africa (London, Lagos and New York: Longhorn, 1982) P.26.

colonial rule.

In Zambia, on the other hand, it seems that intermediation only appeared when -commercial banks were introduced. The history of commercial banking in the country however, formed a part of the general movement of the industry into the Southern and Central African region as a whole. In particular, the emergence of banks in Zambia was directly linked with their appearance in Southern Rhodesia (now Zimbabwe) and Nyasaland (now Malawi), the two countries with which Zambia formed the federation of Rhodesia and Nyasaland in 1953. One leading characteristic of the early banks in the region was that nearly all were connected in one way or another with the London banks.² For this reason these early banks were strongly influenced by English principles and considerations with respect to banker-customer relations and lending. The greatest and most immediate influence however, came from nearby South Africa where most of the banks had their regional headquarters. It was from there that many banks moved to open branches in the neighbouring territories. The usual starting point for new branches was Southern Rhodesia as it was the nearest to South Africa. In addition Southern Rhodesia's big European settler population and relative development made it a

2. The Barclays Bank DCO, for instance, was incorporated in London, Standard Bank of South Africa had common directors with Lloyds, the Midland Bank and Westminster Bank. The Netherlands Bank of South Africa and the Grindlays Bank were also connected to London through shareholding and directorships. see W.T. Newlyn and D.C. Rowan, Money and Banking in British Colonial Africa, (Oxford: Clarendon Press, 1954) PP.744-76.

a natural choice for opening up the rest of the region to banking and other businesses.

2:1 Some Reasons for the Growth of Pre-Independence Banking Business

Several reasons can be cited to explain the emergence and expansion of commercial banking in Rhodesia and Nyasaland during the colonial era. Most of those reasons were in fact common to the industry's expansion in all the other colonies. Basically, they were that banking was an essential element in the success of the whole colonisation programme. Banks financed plantations, railways, harbours and even missionary activities. They were also necessary conduits for the transmission of capital resources between the colonies and the metropolitan powers.³ Their expansion into colonial territories was therefore encouraged and supported by the colonial authorities themselves to help induce trade and stronger administrative organisations.⁴ Newlyn and Rowan ably demonstrated the inter-connection between colonial and banking expansion during the 1950s.⁵ On the particular aspect of official inducements

3. Mirghani M. El. Hassan, The Role of Insurance and its Regulation in Development: Sudan and Tanzania (Ph.D. Dissertation, University of Warwick, 1981) P.7.

4. The suggestion that Standard Bank of South Africa should set up a branch in Southern Rhodesia, for example, came from Cecil Rhodes himself; see James A. Henry, Sixty Years North of the Limpopo; The story of the coming of the Standard Bank to Rhodesia and Nyasaland (Salisbury: The Rhodesian Printing and Publishing Company, 1953) P.29. For other initiatives by colonial administrators, see Standard Chartered Bank (Zambia) Ltd P.52 below, regarding actions of Coryndon and the B.S.A. Company.

5. T.W. Newlyn and D.C. Rowan, op. cit. P.74.

towards increased banking, they point to the establishment of the Bank of West Africa as an example. That bank was established in 1894 with the active support of the authorities to provide services for the British trading enterprises and colonial administrators. From instances like this, it can be concluded that the earliest banks in the colonies were encouraged to set up so that they could continue to serve their clientele of officers, colonial bureaucrats and traders or trading enterprises that followed the Union Jack. In other words, banking served the dual purposes of enabling the colonies to perform their functions as markets and suppliers of raw materials on the one hand, and to be homes, sources of livelihood for the settlers and targets of British Sovereign rule and majestic exploits on the other.

While the establishment of banks served the objectives outlined in the preceding paragraph and confirmed the purpose and function of colonialism in the first place, it nevertheless set in motion a habit or tradition which has had very undesirable consequences. Those consequences are that, even under today's different conditions and circumstances, banking has remained a service industry whose horizons are narrow and consist largely of handling and accepting financial resources rather than making a conscious effort to inject them into more productive investments. In other words, banks in today's independent countries tend to pursue the very goals and precedents set for them by the colonial authorities many years

ago. They are not keen to lend towards long term investments or small scale businesses belonging to indigenous persons even though the circumstances under which they operate indicate that these are the most appropriate and needy sectors so far as national growth and development are concerned. Banks rather look for profitable customers like governments themselves, parastatals companies whose requirements are guaranteed by governments, and foreign or immigrant owned enterprises which deal largely in imported luxuries and exports of primary commodities. To bankers dealings with these customers are cheap to monitor or administer. These customers also constitute a group that poses little or no risk of non-repayment and owns traditionally favoured types of security.

Profits for banks therefore seem to be more important than any expansion in the gross domestic product and employment. For this and other foregoing reasons the expansion of banks should be seen not as a response to obvious increases in the demands for investment resources, but as one aimed largely at providing mere handling and transitory facilities.

In Northern Rhodesia the inter-connection between expanded banking facilities and increased European settlement was amply confirmed by the events that followed the creation of the Federation of Rhodesia and Nyasaland. These included the arrival of large teams of civil servants who were recruited to run the amalgamated and territorial governments. These were followed by increases in the number of immigrants from South

Africa and the United Kingdom who came to take up opportunities in farming and trading in the big market created by the merger. The subsequent expansion in the number of banks and level of their services was said to be a natural consequence of these events. ⁶

It was only afterwards that the expansion in banking services began to be sustained by the growth in primary production and retail trade, and to a small measure, commercial farming; all of which were carried out by settlers and increased with injections of new settlements. These activities were supplemented, especially in the case of Southern Rhodesia, by an increase in manufacturing. ⁷ According to Sowelem ⁸ the gross national income of all three territories (at factor cost) increased by 73 per cent during the ten years of Federation. It is important though, to remember that as with the actual enjoyment of the country's growth or wealth, ⁹ this relatively high rate of income was not shared equally among the three territories. According to the actual pattern of distribution of the gross national product among the territories, 90 per cent went to Southern Rhodesia, 60 per cent to Northern Rhodesia and 55 per cent to Nyasaland. In reality it was largely these specific territorial rates of income which controlled the actual determinants of the expansion of banking in each

6. R.I. Grant-Suttie, "The Rhodesias and Nyasaland", in W.F. Crick (ed) Commonwealth Banking Systems (Oxford: Clarendon Press, 1965) 343.

7. See Chapter 4.

8. R.A. Sowelem, Towards Financial Independence in a Developing Economy (London: George Allen and Unwin Ltd, 1967) P.58.

9. See Chapter 4.

territory. They also influenced the character and composition of the population in each territory which in turn played a part in those factors that determined the growth of the gross national product. Thus in Nyasaland where there was less European settlement and commercial farming, and where production for own consumption played a decisive part in the economic life of the territory, only a few banks established branches. On the other hand, in Southern Rhodesia a predominantly industrial, commercial farming and retail trading territory there was more need for banking services and therefore an expanded service appeared. These opportunities were further enhanced by that territory's position as seat of the federal government and its ability to draw resources from the other territories and apply them to its own purposes. Northern Rhodesia, though a big primary producer, merely occupied an intermediate position in the equation.

In all, there were five banks operating 109 branches, 6 sub-branches and 134 agencies throughout the Federal territory by the end of 1962.¹⁰ These were the Standard Bank of South Africa and the Bank of South Africa which was subsequently absorbed by the National Bank of South Africa. This latter bank was itself changed in 1925 into what is today the Barclays Bank DCO. The other banks were the National and Gridlays Bank, the Netherlands Bank of South Africa and the Ottoman Bank. In addition two merchant banks operated offices in the Federation.

10. R.I. Grant-Suttie, op. cit.

2:2 Post-Independence Banking Expansion in Zambia

At independence, three of the Federation's banks; that is The Standard Bank, Barclays Bank DCO and the Netherlands Bank of South Africa operated in Zambia. In addition, one merchant bank - The Merchant Bank of Central Africa operated a branch in the country. The post independence entrants include the Grindlays Bank International (Zambia) Limited and the Commercial Bank of Zambia Limited which took over the business of the Netherlands Bank of South Africa in 1965, and was itself later absorbed by the Zambia National Commercial Bank Limited (ZNCB) when it was formed in 1969. Others are the Citibank, The Bank of Credit and Commerce, the Indo-Zambian Bank, The Meridien Bank, the African Commercial Bank, and the Union Bank (Zambia) Limited. ¹¹

Clearly, many more banks have been incorporated in the country after independence than there had been during the country's colonisation which lasted seventy years. This surge in new incorporations has caused some people to feel that for a country of less than seven million people, Zambia has more banks than it needs. ¹² Their worry is compounded by the fact that all the banks involved are competing for a tiny group of

11. It has been learnt that two more banks have been registered; The Finance Bank and The Capital Bank: Source: private communication. see also Zambia Daily Mail, 26 October, 1987.

12. See e.g. Dominic Chipeta, African Technical Review cited in Times of Zambia, 3 December, 1987.

wage earners, and private and public sectors along the line of rail as well as in provincial centres.

The increase in the number of banks registered after independence suggests two things. First it suggests that the business of banking in Zambia is a highly profitable one. Indeed a review of the annual statements of most banks shows that they are making impressive profits on their investments. Table 1. illustrates some of those reported profits.

TABLE 1.
Bank Profits 1982-85

YEAR	BANK	PROFIT
1982	Barclays Bank	K 4 million
1984	Barclays Bank	K 11 million
1984	Zambia National Commercial Bank	K 8 million
1985	Standard Chartered Bank (Zambia) Ltd	K 32,113,892

Sources: Annual Reports and Accounts.

The profits shown in Table 1 would in fact have been higher but for tax and reserve requirements of the Central Bank.

The increases in the number of banks registered in recent years also suggests that there has been a growing awareness on the part of politicians and licencing authorities that a great need exists to mobilise more financial resources and that banks are seen as a useful tool for such a task. This implication is seen from the fact that there have been more

incorporations in the last six years than before the period of reform in 1970. A further implication is that the authorities have realised that national ownership of banks may not be an answer in itself to the need for banks to assume a more generous attitude towards development lending. Encouraging new banks to set up, including those owned by outside investors under this new thinking therefore reflects the importance which competition has assumed.¹³ It is now believed that placing all the banks under the ownership of the government will not lead to the necessary competition involving the offering of different terms to depositors as well as investors. It is also believed that without such competition further expansion into rural and semi-rural areas may not be possible. Thus, in reference to the successful establishment of the Zambia National Commercial Bank, for instance, President Kaunda said:

"While the enlarged state bank will serve to introduce an element of healthy competition among commercial banks, it's hoped that it will also depart from restrictive practices of orthodox banking by spearheading the expansion of banking to semi-urban and rural areas and relaxing the traditional criteria for business credit".¹⁴

On the part of the banks themselves, their enthusiasm

13. see e.g. Reference to Ten Year UNIP Manifesto in R. Weiss, "Rationalisation says UNIP, What Next for the Banks?" Enterprise Magazine No.3, 1973.

14. Speech by President Kaunda at the opening ceremony of The Bank of Zambia New Building, Associated Printers 17th July 1975, P.12.

15. See Chapter Four.

for setting up in business now can also be interpreted as reflection of a sense of satisfaction that the threat of nationalisation or state acquisition of their shares along the 1970 lines ¹⁵ has receded. In other words, they are aware of their strong negotiating position vis-a-vis the government and are also confident that the authorities need them more now than ever before. In chapter six it will be seen how the enactment of a new law relating to the procedure and conditions of incorporation may have relaxed the sense of apprehension among bankers and those intending to venture into that business and thus fostered the rapid increases in new banks that has been witnessed.

The order of emergence of banks in Zambia was as follows:

2:2:1 The Standard Chartered Bank (Zambia) Limited

This is the oldest operating bank in Zambia. Incorporated as the Standard Bank of South Africa, it opened a branch in Southern Rhodesia in 1892 and thereafter moved on to Nyasaland and then Northern Rhodesia where it established branches at Blantyre in 1901 and Kalomo (Then the capital of Northern Rhodesia) in 1906 respectively. ¹⁶ The first suggestion that a branch should be opened in what was then

15. See Chapter Four.

16. James A. Henry supra note 4.

North Western Rhodesia ¹⁷ came in 1903 from Coryndon, the territory's commissioner at that time.

The matter was raised again in 1904 by the B.S.A. Company itself as the overall administrative authority of the territory. At that time however, save for a skeleton administration there was no development whatever to justify the opening of a bank. The railway only reached the Zambezi River in June 1904, and did not reach the zinc and lead mines at Broken Hill (now Kabwe) until 1906. In addition there was the intention to combine the administrative authorities of North Western and North Eastern Rhodesia into one, and therefore there was uncertainty as to where the capital of the territory, and therefore the first branch of the bank, would ultimately be situated. This situation was resolved when Kalomo became capital in 1906. Accordingly the first branch of the bank was established there.

Before the establishment of the Central Bank of Rhodesia and Nyasaland in 1956, the Standard Bank also handled the administration of all inter-bank clearing arrangements in the federation. At the end of each working day the net position of each bank was calculated against the Standard Bank and the settlements were done daily in London through appropriate

17. The territory was at first administered in two separate portions; North Eastern and North Western Rhodesia. The former was administered from Blantyre in Nyasaland until the B.S.A. Company set up its own administration at Fort Jameson in 1895. See James Henry, op. cit. P.34.

transfers between the London offices of the banks involved. When the sums involved were relatively small, settlements were carried out locally by transfers of currency. ¹⁸

In 1962 the bank's name was changed from Standard Bank of South Africa to Standard Bank only. Since then it has changed again to its present form. ¹⁹ Following the 1970 economic reforms and the subsequent enactment of the Banking Act, 1971, which provided for the incorporation of all the banks wishing to operate in Zambia locally, the bank was accordingly incorporated on 11th November, 1971. ²⁰ It however, remains a subsidiary of an international banking group. Under the arrangement worked out during incorporation, Standard Bank Limited simply sold its business undertaking, properties and assets to the new bank in exchange for a majority shareholding. ²¹

18. L.A. Sowelem op. cit.

19. See certificate of incorporation and letter dated 16th May, 1985 on file No.6525 at the Companies Registry, Lusaka.

20. Letter No. L.co. 6525 of 11th November, 1971 on file at the Companies Registry, Ministry of Trade and Commerce, Lusaka.

21. Agreement dated 22nd November, 1971 between Standard Bank Limited and Standard Bank (Zambia) Limited on file at the Companies Registry, Lusaka.

The company has a nominal capital of K30 million and operates 23 branches and 15 agencies and services in various parts of the country, but especially along the line of rail and in provincial centres. 22

2:2:2 Barclays Bank Zambia Limited

The origins of this bank date to 1918 when Barclays Bank DCO, a company incorporated in the United Kingdom, opened a branch in Northern Rhodesia. The bank, even though it remains a wholly owned subsidiary of Barclays Bank International Limited; was incorporated locally in 1971 under the present name with a paid up capital of K2 million. Today it has a nominal capital of K50 million and operates 32 branches and 26 agencies mainly concentrated in the copperbelt and central provinces.

2:2:3 Grindlays Bank International (Zambia) Limited

This bank took over the business formerly transacted by the National and Grindlays Bank Limited of the United Kingdom. It is a wholly owned subsidiary of the Grindlays Bank International; a United Kingdom bank. Its first branch was

22. See Standard Chartered Bank Zambia Limited, Annual Report 1985. P.24.

23. Now known as Barclays Bank PLC in accordance with the Barclays Bank Act 1984 of the U.K. see Barclays Bank Zambia Limited, Report and Accounts, 1984 P.13. Barclays Bank PLC (Still appearing as Barclays Bank International on registration records in Zambia) holds 27,699,993 of the Banks 30,000,000 shares. see form II of the Companies Act, Section 47; filed on No.6444 and dated 26/3/85 at the Companies Registry.

opened in Zambia in 1965. ²⁴ The bank became locally incorporated on 1st December, 1971. ²⁵ It operates 11 branches, mainly in the line of rail towns. In addition, Grindlays Leasing, its wholly owned subsidiary, started operations in 1973 to service commercial organisations.

2:2:4 The Zambia National Commercial Bank Limited

This bank, incorporated on August 21st, 1969 was the first Zambian owned, though not the first Zambian incorporated commercial bank. The first Zambian incorporated bank was The Commercial Bank Zambia Limited, whose history has now been buried within the ZNCB limited. That bank (the Commercial Bank Zambia limited) was incorporated on 1st May, 1965 to take over the business of the now defunct Netherlands Bank of South Africa. It was then one of the smallest banks in the country with an authorised share capital of only K2 million of which only K500,000 was paid up. ²⁶ During the economic reforms of the financial sector in 1970, the government took over 60 per cent of its equity, increasing it to 100 per cent in 1973 when it was merged with the ZNCB Limited.

24. Ten Years of Banking in Zambia, a Bank of Zambia Publication, (Lusaka Associated Printers, 1975, P.15)

25. See Letter L.CO. 6559 of 1st December, 1971, written by Assistant Registrar of Companies, file No.6559, Lusaka.

26. S. Musokotwane, Financial Institutions and Economic Development in Zambia, (Dissertation Zur Erlangung des Akademischen grades eines Doktors de wirtschaft suissenschaft and de Universitat Konstanz. June 1985).

At the time of its incorporation the ZNCB Limited had a nominal capital of K5 million. This has now been increased to K30 million of which 99 per cent of the paid up capital is held on behalf of the government by ZIMCO, which replaced FINDECO. The rest of the shares are held by private Zambian individuals and parastatals. The bank having started from scratch has since managed to open 30 branches throughout the country and on May 20, 1974 opened its first overseas branch in London. 27

2:2:5 Citibank (Zambia) Limited

This bank was incorporated in Zambia on 8th June, 1979. It is a subsidiary of the Citibank of New York, which is itself a subsidiary of the holding company, Citicorp. The bank operates only one branch and has a nominal share capital of K12 million.²⁸ Three characteristics make this bank different from all the other commercial banks in the country:

(a) Until 1987, ²⁹ it was the only American bank in the country. Earlier the business of banking in Zambia was dominated by British and South African banks, with the exception of the ZNCB which is wholly Zambian owned.

27. Ten Years of Banking in Zambia, op. cit.

28. See file No.9697, Companies Registry, Lusaka.

29. The Union Bank (Zambia) Limited was incorporated early in 1987 with the Union Bank of Africa, a U.S. company as a major shareholder. See Zambia Daily Mail, 29th January 1987. Before it the Meridien Bank of Zambia Limited which appeared in 1984 had some American connections. see 2:2:7 below.

Musokotwane ³⁰ explains the absence of American banks on the Zambian scene as a result of the hitherto prevailing notion among Zambian officialdom that American banks knew more about Latin America than Central Africa. Overtures by the bank to come to Zambia were therefore resisted until a change in official perception was attained in 1979.

(b) It is the only bank in Zambia which operates a Wholesale Service. ³¹ Only companies, embassies and international organisations may open accounts with it. The only individuals who may open accounts with it are those from embassies or diplomatic institutions which do business with it. ³²

(c) It is the only commercial bank which offers both morning and afternoon services, a characteristic no doubt imported from America.

2:2:6 The Bank of Credit and Commerce (Zambia) Limited

This bank was incorporated in Zambia on 27th May, 1980. It is a subsidiary of the Middle Eastern owned Bank of Credit and Commerce International Holdings (Luxembourg) S.A.; which with the help of nominees owns virtually all the 10,000 shares in the bank. The bank has a nominal share capital of K10 million ³³ and operates five branches in the country.

30. S. Musokotwane op. cit.

31. D. Banda, Public Relations Officer, written reply to Questionnaire.

32. Ibid.

33. See Notice of increase of capital pursuant section 58 of the Companies Act, on file No.10208: dated 16th April 1985.

2:2:7 The Meridien Bank (Zambia) Limited

Incorporated in September, 1984 this bank is a subsidiary of Meridien International Bank Limited, an American holding company, with Amax (Zambia) Limited and one or two Zambian nationals holding minority shares.³⁴ It has a share capital of K30 million and runs two branches in Zambia.

2:2:8 The African Commercial Bank Limited

This is the only bank in Zambia which is wholly owned by private Zambian citizens. It was incorporated on June 5th, 1984 and has a nominal capital of K3 million divided into 20,000 shares of K50 each.³⁵ Being one of the youngest banks, it has only one branch in Lusaka.

2:2:9 The Indo-Zambia Bank Limited

Until recently this was the youngest bank to be set up in the country. It was incorporated on October 19th, 1984.³⁶ It was formed by the Bank of Baroda with the participation of the Central Bank of India and the Bank of India. The bank has a share capital of K10 million divided into 10,000 shares of K1,000 each and runs only one branch.

34. See form 8, Section 79, dated 26th September, 1984 on file No.12856, Companies Registry, Lusaka.

35. See certificate of Acting Deputy Registrar of Companies, dated 21st January, 1985 on file No. LCO 13148, Companies Registry, Lusaka.

36. See file 13460, Companies Registry, Lusaka.

2:3 Expansion of Assets and Business

Alongside the physical expansion of the commercial banking industry went the banks' growth in terms of volume of business. At the end of the Federation in 1963, the total assets of all commercial banks in the Federation was found to be £106.8 million.³⁷ This was an increase of approximately 30 per cent over the £86.6 million level of 1952. By 1985, and owing to the establishment of more banks these assets had risen to over K4.0 billion or £2 billion.³⁸ Tables 2, 2(a) and 2(b) show a summary of the asset structure of Zambian banks from the colonial days to September 1985.

TABLE 2

(SHOWN OVERLEAF)

37. R.A. Sowelem op. cit. P.64.

38. Bank of Zambia, Quarterly Financial and Statistical Review, Vol.17. September 1985.

TABLE 2.

Pre-Independence, Commercial Bank Assets. (£m).

ITEM	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1. Notes and Coin	2.9	3.4	3.7	4.2	4.3	4.6	4.2	3.0	3.4	2.9	3.1	3.6
2. Gold coin and Bullion	0.3	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1
3. Balances with Central Bank	-	-	-	-	0.1	4.6	7.5	7.1	5.4	4.9	5.1	5.4
4. Balances due by banks abroad	37.9	39.9	39.5	33.4	26.1	22.8	9.0	9.0	2.4	0.3	3.6	0.5
5. Balances due by Local Banks and branches			1.3	3.4	2.4	3.5	6.2	4.1	4.6	5.2	5.5	6.4
6. Money at call	-	-	-	-	-	-	-	1.6	2.2	4.3	6.5	9.1
7. Treasury Bills	0.4	0.1	-	-	-	0.6	0.1	0.6	-	0.7	0.8	2.0
8. Bills of exchange	5.9	4.9	5.9	7.0	9.1	10.2	8.3	6.3	6.9	7.3	6.6	6.4
9. Investments	8.8	10.4	11.8	12.0	10.8	11.2	11.7	13.4	13.4	13.5	14.0	14.3
10. Advances	25.0	21.4	27.0	33.4	40.7	41.7	39.6	40.1	50.4	52.0	50.5	53.2
11. Bank Premises and other assets	1.2	1.4	1.8	2.4	3.0	3.9	5.0	6.0	6.4	6.9	6.9	7.2
12. TOTAL ASSETS	82.6	81.7	90.7	96.0	96.9	103.4	92.1	92.4	93.8	101.3	103.8	106.88

SOURCE: Federation of Rhodesia and Nyasaland, Quarterly Bulletin of Financial Statistics. Central Statistical Office, Salisbury October 1963.

see also R.A. Sowelem op. cit. P.65.

COMMERCIAL BANKS — ASSETS

(K'000)

Assets

End of Period	Notes & Coin		Balances Held			Treasury Bills	Loans and Advances to				Bills of Exchange	Government Securities	Other Assets
	Zambian	Other	Bank of Zambia (2)	Banks Abroad (19)	Zambian Banks (3)		Total (22)	Public & Statutory Bodies (23)	Government (24)	Non-Residents (25)			
1965	(16) 5,067	(17) 82	(18) 9,489	(19) 10,069	(20) 6,930	(21) 11,270	(22) 32,599	(23) 32,295	(24) 304	(25) N/A	(26) 9,621	(27) 9,582	(28) 6,025
1966	4,375	73	9,165	16,723	7,362	12,240	38,654	37,804	850	N/A	28,743	9,902	9,367
1967	5,634	89	10,791	15,104	11,373	5,230	67,732	66,610	1,122	N/A	25,777	8,658	14,785
1968	7,226	90	15,120	4,761	35,497	29,970	73,501	70,969	2,532	N/A	19,491	11,023	15,630
1969	8,344	129	23,084	10,086	36,195	37,120	80,746	79,220	1,526	N/A	31,060	17,255	19,057
1970	9,028	202	18,645	17,466	34,268	21,090	103,107	97,648	5,459	N/A	37,385	29,083	22,353
1971	9,408	155	24,575	9,667	39,269	11,400	141,733	141,081	626	26	39,668	27,729	38,088
1972	10,382	110	34,145	5,795	28,835	52,590	157,808	155,885	190	1,733	9,110	29,823	38,721
1971													
January	6,834	111	17,823	20,346	27,063	30,180	104,110	98,790	5,320	N/A	36,673	29,294	19,718
February	6,213	113	18,056	17,890	27,625	30,030	103,677	98,302	5,375	N/A	34,400	27,446	20,226
March	6,682	102	18,034	10,253	32,771	18,980	108,432	101,716	6,716	N/A	34,830	27,446	24,317
April	5,534	93	17,919	14,523	34,590	21,760	104,243	94,059	10,184	N/A	34,579	27,578	21,135
May	5,935	86	18,984	14,478	26,600	29,750	106,514	96,316	10,198	N/A	34,662	28,278	21,698
June	7,293	93	26,128	14,811	42,677	21,720	104,505	93,223	11,282	N/A	36,629	28,277	23,081
July	6,226	121	17,425	15,594	31,741	27,020	107,610	107,344	263	3	36,233	28,277	31,064
August	7,785	116	17,614	14,274	33,512	37,300	114,151	113,683	466	2	34,005	27,768	37,833
September	7,553	98	26,554	15,248	36,339	24,730	130,812	130,806	5	1	32,196	27,769	37,355
October	8,226	104	20,114	15,165	29,747	40,720	129,341	128,911	417	13	36,170	27,769	37,870
November	8,667	161	21,774	12,696	39,531	12,940	135,809	135,248	549	12	38,670	27,768	41,418
December	9,408	155	24,575	9,667	39,269	11,400	141,733	141,081	626	26	39,668	27,729	38,088
1972													
January	8,087	139	19,413	10,796	28,643	20,480	148,414	148,015	370	29	36,886	27,715	29,802
February	7,489	139	19,225	13,226	29,938	31,290	146,165	144,988	1,255	12	37,849	27,731	30,127
March	5,807	121	20,241	9,499	39,162	19,400	158,983	156,310	2,661	12	38,260	27,730	41,556
April	6,585	120	21,165	11,689	33,278	27,220	156,221	151,367	4,846	8	39,375	30,730	36,164
May	8,743	138	19,140	9,803	32,531	19,060	160,452	158,394	2,052	6	38,191	30,031	36,734
June	6,372	126	19,855	5,983	33,510	27,790	156,687	154,801	1,881	5	40,659	29,532	37,218
July	8,209	119	32,228	4,763	34,781	34,781	158,321	152,606	5,714	4	35,489	29,524	37,116
August	10,044	120	32,218	5,607	36,683	11,270	162,392	162,375	6	11	29,589	29,823	37,457
September	7,740	128	31,470	3,341	28,405	22,220	170,723	170,703	13	7	21,495	29,823	35,143
October	9,345	118	33,385	5,623	27,570	34,150	166,142	165,483	654	5	16,114	29,822	37,138
November	8,305	118	33,251	3,596	32,787	65,300	157,805	157,786	18	1	12,238	29,822	37,666
December	10,382	110	34,145	5,795	28,835	52,590	157,808	155,885	190	1,733	9,110	29,823	38,721

(1) Includes the Merchant Bank

(2) Does not agree with figures in Bank of Zambia books due to certain items in transit

(3) Includes net items in transit between branches of the same bank

Source: Bank of Zambia

Report and statement of Accounts for the year ended December 31st 1972

Loans and advances

Balances held

Notes & Coin

End of period	Bank of Zambia (b) (18)		Banks abroad (19)	Zambian Banks (c) (20)	Treasury bills (21)	Total (22)	Public & Statutory bodies (23)	Government (24)	Non-resident (d) (25)	Bills of exchange (26)	Government securities (27)	Other assets (28)
	Zambian (16)	Other (17)										
1970	9 028	202	17 466	34 268	21 090	103 107	97 497	5 459	152	37 385	37 385	29 083
1971	9 408	155	9 667	39 269	11 433	141 081	141 081	626	26	39 668	27 729	22 353
1972	10 382	110	5 795	28 835	52 590	157 808	155 885	190	1 733	9 110	29 832	38 088
1973	13 769	106	5 472	43 317	78 540	160 916	160 689	5	222	13 658	42 728	38 721
1974	14 576	149	11 794	54 806	2 390	270 627	270 500	59	18	64 783	37 804	76 676
1975	14 175	271	4 571	70 528	99 530	328 459	328 395	44	20	16 809	36 121	105 515
1976	17 166	177	9 724	71 699	236 670	324 731	316 322	8 389	10	30 075	45 406	81 806
1977	18 434	175	6 112	51 710	466 973	333 022	317 515	13 656	1 851	29 158	65 898	76 869
1978	23 942	177	26 060	66 264	85 748	301 591	397 173	4 400	18	10 451	56 412	108 247
1979	25 646	206	75 014	45 036	231 610	347 610	386 325	1 009	6	15 751	49 688	121 052
1980	23 478	200	44 411	90 782	232 868	431 212	431 212	41	360	12 204	42 225	178 850
1981	34 127	279	82 221	131 861	80 192	699 775	693 646	5 892	237	9 638	31 507	127 109
1982												
January	24 747	177	46 984	83 709	91 190	696 097	686 894	9 775	28	8 608	31 507	136 607
February	21 573	194	34 238	92 199	105 108	704 185	698 884	5 294	37	7 555	31 507	145 116
March	22 924	206	35 673	111 958	103 383	708 287	703 082	5 171	34	6 792	31 532	145 116
April	20 495	251	39 766	97 997	143 875	701 380	696 140	5 113	127	6 655	30 847	167 811
May	25 745	194	34 049	80 039	154 954	721 927	717 317	4 581	29	6 359	30 847	170 926
June	26 842	233	36 264	107 817	203 352	694 736	691 661	3 042	33	5 901	29 856	169 820
July	24 582	269	32 961	94 771	166 009	726 783	726 720	35	28	6 103	29 856	256 110
August	27 567	221	32 824	94 654	197 665	741 140	741 080	32	28	7 327	29 856	174 534
September	32 224	223	30 743	102 237	253 882	727 839	727 048	787	4	6 696	29 856	185 286
October	25 413	275	34 007	85 405	228 482	709 551	709 353	192	6	4 683	29 856	180 674
November	27 706	255	25 485	99 121	275 204	751 026	750 829	193	4	3 812	29 856	178 460
December	33 206	263	23 906	148 473	316 802	747 116	741 116	21	6 582	3 772	29 865	177 165
1983												
January	26 005	141	35 901	99 612	384 080	741 785	741 462	317	6	3 675	29 865	184 216
February	24 224	191	26 250	100 656	397 883	727 564	708 195	11	19 358	3 628	29 865	183 143
March	21 498	276	37 193	73 766	388 549	715 023	713 824	942	257	4 134	28 845	196 862
April	22 360	201	46 693	107 243	363 420	714 324	709 955	4 366	3	4 025	31 845	182 941
May	29 499	167	42 322	106 603	422 712	699 117	694 787	4 328	2	4 088	31 845	165 770
June	31 961	254	47 718	125 155	402 023	714 272	707 659	6 380	223	4 287	31 845	154 672
July	26 853	299	44 820	133 086	410 414	700 970	700 116	602	252	3 807	31 854	150 352
August	32 285	215	42 165	114 393	360 267	753 567	751 871	1 387	309	3 775	28 854	159 879
September	29 668	232	47 684	159 320	323 861	811 216	811 171	39	6	3 480	31 854	161 376
October	34 351	201	781 359	151 377	306 858	815 621	815 601	13	7	4 547	27 854	167 172
November	29 803	252	55 193	144 728	311 065	857 648	857 605	33	10	4 096	31 854	186 406
December	38 277	312	56 628	253 020	276 438	862 899	862 552	343	4	4 482	27 863	194 844
1984												
January	31 875	395	51 089	169 507	345 682	864 812	864 741	67	4	5 249	27 863	191 578
February	24 106	342	41 665	165 658	350 250	883 401	883 381	17	3	3 207	30 863	199 696
March	20 837	361	49 718	155 322	387 281	865 360	865 318	39	3	9 563	27 863	204 368
April	25 375	424	50 696	150 349	381 939	881 362	881 198	160	4	10 769	27 863	213 590
May	29 869	480	48 016	178 703	409 404	865 727	864 458	1 265	4	7 232	31 366	212 967
June	23 249	462	45 428	196 417	420 130	905 676	905 503	167	6	7 597	30 375	224 253
July	30 740	277	61 117	170 478	385 262	952 110	949 239	403	2 468	3 227	28 175	237 926
August	29 767	675	54 775	197 512	388 812	941 725	949 969	1 749	7	2 506	28 374	238 889
September	28 924	1 041	78 156	293 333	349 030	977 638	977 385	247	6	3 833	27 374	251 863
October	32 930	469	70 602	221 140	417 769	1 026 986	1 025 851	121	1 014	4 934	37 375	278 185
November	32 511	1 130	71 413	232 376	432 795	1 007 925	1 007 851	63	11	5 310	38 375	286 802
December	41 117	1 599	62 827	239 933	392 317	1 029 280	1 029 111	65	104	7 210	38 375	299 054
1985												
January	38 220	1 119	66 156	236 338	480 861	1 038 792	1 038 711	70	11	5 496	37 883	305 957
February	34 671	1 144 915	397 440	476 511	1 035 294	1 035 185	1 035 185	41	6 813	37 883	308 560	306 648
March	31 613	282	68 779	223 469	473 401	1 029 259	1 028 698	66	495	3 910	37 382	303 783
April	24 512	568	66 448	162 780	483 665	1 093 331	1 093 211	114	6	5 307	39 383	331 328
May	31 986	497	57 006	252 427	491 197	1 078 269	1 075 006	3 238	25	3 973	39 383	330 306
June	30 115	565	71 420	238 969	506 253	1 080 161	1 079 165	920	76	4 036	39 392	345 964
July	46 069	506	60 260	233 548	517 421	1 111 133	1 111 036	74	23	3 022	39 615	353 045
August	41 973	443	55 950	256 808	509 957	1 158 217	1 142 171	16 013	33	2 865	38 375	479 913
September	47 304	605	52 585	276 248	551 240	1 224 827	1 224 665	153	9	2 272	38 526	

Source: Bank of Zambia Quarterly Financial and Statistical Review. Vol.17, September, 1985

(a) Includes the Merchant Bank.

(b) Shown not shown with figures for Bank of Zambia.

Reasons for this impressive growth in the volume of assets and business enjoyed by Zambian banks are varied. They include, the ending of the Federation of Rhodesia and Nyasaland, with which came the ability to retain the nation's resources within its borders. Hitherto the bulk of the country's earnings and resources had been siphoned off to Southern Rhodesia and London.³⁹ To this must be added the restrictions imposed on expatriate companies and businessmen during the Mulungushi Economic Reforms⁴⁰ in connection with the remission of profits abroad. Other grounds were the economic boom which was experienced soon after independence during high demand and good prices for copper; as well as the diminishing levels of foreign exchange which followed the drop in copper sales and prices in the 1970's and '80s. This latter factor forced many businesses which rely on imported materials to operate below capacity and to keep the rest of their money in interest yielding accounts pending allocation of foreign exchange.⁴¹

Despite the increase in the volume of their business post independence banks in Zambia have maintained virtually the same balance sheet items as their colonial counterparts. Indeed compared with banks operating in developed countries, some of

39. See Chapter Four.

40. referred to in Chapters One and Four.

41. See e.g. Chapter Five P.236

which are parent companies of Zambian Banks, the types and patterns of management of their assets are stagnant and unsophisticated. Such innovations as credit cards, stock dealings, house loans or simply new corporate and retail financial instruments have yet to be introduced. Zambian banks have also yet to be introduced to the system of operating in non traditional areas of the financial market, such as financial consultancy for such ventures as take-overs, business expansion programmes, share purchasing, and so on.

One notable departure from the pre-independence banking situation is the tendency by Zambian banks to keep high levels of liquid assets. Table 3 illustrates this.

TABLE 3.

TABLE 3.
ANALYSIS OF COMMERCIAL BANKS'
LIQUIDITY (a) (K'000)

End of period	Actual (c) liquidity	Formal (c) liquidity	Total liquidity	Liabilities to the public	Liquidity ratio		
					Actual	Formal	Total
1970	45.401	71.883	117.284	267.650	17.0	26.9	43.9
1971	33.711	73.724	107.435	287.137	11.7	25.7	37.4
1972	64.193	81.101	145.294	308.311	20.8	23.3	47.1
1973	92.561	106.902	199.463	373.627	24.8	28.6	53.4
1974	17.359	126.987	144.341	413.296	4.0	40.7	34.7
1975	114.997	113.975	228.972	434.971	26.4	26.2	52.7
1976	158.292	156.860	415.151	533.956	48.4	29.4	77.7
1977	566.923	120.915	687.838	640.722	88.5	18.9	102.4
1978	114.029	193.835	307.864	575.531	19.8	33.7	53.5
1979	264.840	214.659	479.499	780.795	33.9	27.5	61.4
1980	259.169	220.570	479.739	824.582	34.4	26.7	58.1
1981	115.453	295.982	411.435	688.689	13.3	34.1	47.4
1982	117.284	245.396	362.680	546.073	13.9	29.0	42.9
January	117.284	245.396	362.680	546.073	13.9	29.0	42.9
February	127.222	251.737	378.959	850.492	15.0	29.6	44.6
March	133.554	254.143	387.697	895.360	14.9	28.4	43.3
April	171.044	266.263	437.307	926.207	18.5	28.7	47.2
May	182.759	244.491	427.250	937.048	19.5	26.1	45.6
June	231.628	261.369	492.997	984.389	23.5	26.6	50.1
July	191.389	241.821	433.210	965.141	19.8	25.1	44.9
August	187.335	290.027	477.362	1.031.051	18.2	28.1	46.3
September	288.279	254.557	542.836	1.085.705	26.6	23.4	50.0
October	179.270	346.143	525.413	1.071.904	16.7	32.3	49.0
November	305.556	257.874	563.430	1.117.289	27.3	23.1	50.4
December	337.024	306.344	643.368	1.195.907	28.2	25.6	53.8
1983							
January	417.118	258.433	675.551	1.180.689	35.3	21.9	57.2
February	437.715	256.100	693.185	1.164.882	37.6	22.0	59.6
March	424.523	246.376	670.899	1.165.505	36.4	21.1	57.5
April	392.185	267.380	659.565	1.159.473	33.8	23.0	56.8
May	461.742	278.684	740.426	1.183.676	39.0	23.5	62.5
June	432.738	315.373	748.111	1.218.752	35.5	25.9	61.4
July	448.397	306.687	755.084	1.200.211	37.4	25.6	63.0
August	402.784	309.742	712.526	1.208.008	33.3	25.6	58.9
September	364.233	349.769	714.002	1.250.176	29.1	28.0	57.1
October	351.666	352.089	703.755	1.235.252	28.5	28.5	57.0
November	373.528	344.539	718.067	1.246.375	30.0	27.6	57.6
December	333.150	392.921	727.071	1.319.717	25.2	29.8	55.0
1984							
January	387.773	346.831	734.604	1.286.168	30.1	27.0	57.1
February	388.063	330.944	719.007	1.286.169	30.2	25.7	55.9
March	426.615	315.420	742.035	1.269.172	33.6	24.8	58.4
April	392.185	267.380	659.565	1.159.473	33.8	23.0	56.8
May	473.453	306.298	779.751	1.301.126	36.4	23.5	59.9
June	459.765	339.551	799.316	1.359.387	33.8	25.0	58.8
July	431.877	347.053	778.930	1.249.641	34.6	27.7	62.3
August	437.129	372.411	809.540	1.412.939	30.9	26.4	57.3
September	430.489	452.973	883.462	1.486.929	28.9	30.4	59.4
October	475.030	422.661	897.691	1.483.469	32.0	28.4	60.5
November	485.371	453.785	939.156	1.521.000	31.9	29.8	61.7
December	498.184	474.798	972.982	1.542.420	32.3	30.8	63.1
1985							
January	555.254	422.435	977.689	1.514.925	36.6	27.8	64.5
February	539.756	429.868	969.624	1.520.480	35.4	28.2	63.7
March	549.778	449.589	999.367	1.549.134	35.5	29.0	64.5
April	540.219	425.948	966.167	1.507.306	35.8	28.3	64.1
May	554.389	473.288	1.007.677	1.571.558	35.3	30.1	65.4
June	573.159	498.080	1.071.839	1.562.803	36.7	31.8	68.5
July	613.588	460.884	1.073.922	1.597.044	38.4	28.8	64.2
August	595.529	480.846	1.076.375	1.597.392	39.3	30.1	67.4
September	661.887	528.639	1.190.476	1.682.473	39.3	31.4	70.7
October	716.307	486.223	1.202.530	1.781.730	40.2	27.3	67.5
November	835.576	454.179	1.289.756	1.843.387	45.3	24.6	69.9
December	899.857	452.208	1.352.065	1.914.134	47.0	23.6	70.6
1986							
January	792.364	477.641	1.270.005	1.976.549	40.1	24.2	64.3
February	802.251	432.257	1.234.508	2.079.834	38.6	20.8	59.4
March	893.530	591.471	1.484.039	2.350.796	38.0	25.2	63.1
April	921.327	630.000	1.550.327	2.187.830	42.1	28.8	70.7
May	844.096	705.180	1.549.276	2.385.351	35.4	29.5	64.9
June	930.456	836.725	1.767.181	2.540.342	36.6	32.9	69.5
July	880.226	846.056	1.726.282	2.560.697	34.4	33.0	67.4

SOURCE: Bank of Zambia, Research Department

(a) Including Merchant Bank up to December 1971

(b) Actual liquidity note and coin; other cash balances. Treasury bills; external liquid assets up to April 1972

(c) Formal liquidity, minimum reserve requirements; bills of exchange and promissory notes; local registered stocks
Money at Call; items in transit; special items authorised by the Minister of Finance.

The tendency to keep high levels of liquidity came about in part due to the vigorous exercise, by the Bank of Zambia, of its power to determine the minimum liquidity ratio.⁴² There has also been a vigorous enforcement of the ratio levels as and when they came, which was quite often as Table 3 shows.

Another explanation for the high levels of liquidity is that there is a large amount of funds in the banks which are awaiting externalisation as payments for goods received or services rendered by individuals and foreign companies. These deposits are maintained in accordance with the prevailing exchange control regulations in what is called a "pipeline".⁴³ Once funds are placed in the pipeline they remain there until

42. Section 20 of the now repealed Bank of Zambia Act provided that all banks must maintain a minimum liquidity ratio determined by the Bank of Zambia. Today section 21 and 22 of the Banking Act CAP700 perform much the same function. The ratio between 1965 and 1970 was 25 per cent see Statutory instrument No.7 of 1965.

43. See e.g. Regulation IX(E) Bank of Zambia, modification to Foreign Exchange Arrangements. Guidelines to Parties involved in the Buying and Selling Foreign Exchange. 1985.

foreign exchange becomes available for their externalisation. Presently the pipeline has grown longer and is almost blocked due to shortages of foreign exchange, and hence the high levels of liquidity in the banking system.

In addition to the funds retained in the banking system as part of the liquidity ratio and pipeline for outgoing funds, balances held with the Bank of Zambia such as clearing accounts, current accounts, and Reserve accounts are also liquid for the purposes of the Banking Act.⁴⁴ Others are treasury bills, bills of exchange, promisory notes eligible for discount at the Bank of Zambia and local registered stocks issued by the Government of Zambia. In terms of local registered stocks, they must have a maturity age of less than six years to be eligible.

Aside from these causes of liquidity, some theorists see its presence as an indication that other forces are at play. Firstly, high liquidity is treated as a consequence of substantial amounts of primary liquidity⁴⁵ entering the economy. The main source of primary liquidity before the collapse of the copper prices and demand was, as indicated earlier, the high earning of foreign exchange. During their absence since 1974 other sources must have contributed to the

44. Supra note 42.

45. Defined to include net foreign assets of the Bank of Zambia, The Bank of Zambia's net claims on the Government and the Private Sector, and treasury bills outside The Bank of Zambia, see Musokotwane op. cit. P.35.

growth in liquidity. These sources according to Musokotwane ⁴⁶ are heavy borrowing both by the government and the mining companies particularly from the Bank of Zambia. Another source could be the failure of other uses of primary liquidity, such as the minimum reserves, currency in circulation outside the banks and treasury bills held by the non-bank public, to absorb a significant portion of the liquidity.

The holding of excess liquidity above all else is a reflection of the nature of the market for commercial bank credit in Zambia. Firstly, it confirms that economic activity in the country's highly vulnerable to movements in the flow of foreign exchange. Any appearance of a shortage in the availability of foreign exchange is matched by a corresponding decline in the demand for credit by the traditional borrowers in the country. In addition, it also compels liquid importers to transfer their liquidity on to the banks. Secondly, it indicates to some degree, that commercial banks are rather conservative in the making of loans and advances. Thirdly, it indicates the inappropriateness of some of the financial policies and regulations that have been pursued to date by the government, including excessive borrowing and controls on such things as interest rates and foreign exchange.

On the liabilities' side, these have consisted mainly of the overnight advances from the central bank and deposits of members of the public as well as businesses since the colonial days. The only other notable items are the amounts owed by the

banks to each other and to banks abroad. Taken against the somewhat remarkable growth in banking services and assets that has been seen, deposits have shown a relatively moderate increase. They rose from £82.4 million in 1952 to £103.6 million in 1963, an increase of 25.7 per cent only. Their present level is K3.6 billion ⁴⁷ or £1.5 to £2 billion, depending on the fluctuations in the rate of exchange.

Deposits have traditionally consisted of three types of accounts, both prior to and after independence. ⁴⁸ These are deposits payable on demand which are commonly known as demand deposits or current accounts; savings deposits and fixed deposits. Savings deposits are interest paying deposits on which banks require intervals of at least seven days between drawings. During the Federation it was normal for commercial banks to require prior notice of seven days before withdrawals of amounts exceeding £50 could be made on these deposits. The fixed deposits also pay interest, and only differ from savings deposits in so far as they require thirty days notice or a lapse of a fixed period of between three and twelve months before any withdrawals can be authorised.

Two observations can be made about the behaviour of commercial bank deposits during the period under consideration. Firstly, in terms of size, demand deposits originally tended to

47. As at September, 1985; see Bank of Zambia Quarterly Financial and Statistical Review, Volume 17, No.3. P.29

48. See Bank of Rhodesia and Nyasaland Act, 1956. see also Banking Act, CAP700, Subsidiary Legislation, Banking Regulations, Regulation 6.

Firstly, in terms of size, demand deposits originally tended to constitute the largest component of the total deposit liabilities of the banks. In recent years however, they have gradually declined in relative importance as time deposits have become more preferable. This is because time deposits are interest paying, and in view of the uncertain nature of the foreign exchange situation, depositors who are mainly importers prefer to earn interest on their accounts than to place them in non yielding demand deposits which also charge handling fees. Secondly, although deposits generally declined somewhat during the Federal era, owing largely to the transfer of most government deposits from commercial banks to the central bank, their rise after the copper price drop has been remarkable. This as already seen is attributable to the shortage of foreign exchange and the absence of alternative uses for liquidity. Government securities which ought to have provided one such alternative have not been highly attractive due to the low rates of interest on them.

Although the actual role of commercial banks in granting commercial credit and the volume of their involvement will be examined in chapter five, it suffices to mention here that if the banks acted in accordance with existing liquidity levels, that role ought to be very significant. The public's preference currently for savings and time deposits which are long-term savings ought to have been an added incentive for the purpose of lending. This is because such deposits, when they exist in large numbers, can act as a cushion against the potential

danger of over exposure to sudden demands by customers. In other words, the defence which is generally raised by commercial banks that they fear to lend long-term when the bulk of their liabilities are short-term ought to fall.

Finally, it is important to mention that, despite impressive increases in banking business and savings, more could have been achieved if some other factors had not occurred. Some of these factors have already been seen and they include the universal syndrome of low income levels which afflicts most developing countries. The other is the now notorious commercial bank habit of shunning rural areas where most of the people reside. The latter factor has kept the majority of the people ignorant about banking with the consequence that funds in rural areas continue to be kept in roofs and tins instead of being introduced into the circulation system. It may also be urged that even in the exceptional instances where rural people have access to urban or semi-urban banks, the minimum deposit levels of K50 or more may be too high for them to start accounts as average earnings are just about K2,000 per annum or K106.00 per month.⁴⁹ Needless to add that by not venturing into the rural areas and tapping their resources, commercial banks diminish their intake of savings and other deposits even further as they have to compete with each other for what remains of the urban workers' income, which largely

49. See Republic of Zambia, Monthly Digest of Statistics Supplement to Vol.XXI No.8 to 9 August/September 1985 (Lusaka: Central Statistical Office) P.6. These figures do not include domestic services.

goes on consumption. Other competitors as seen are the urban based deposit taking institutions such as the Zambia State Insurance Corporation and the Zambia National Building Society.

2:4 Conclusion

The introduction of commercial banking in Zambia formed part of the industry's overall penetration of the whole Southern and Central African region during the early 1900s. Banks were encouraged by the colonial authorities to set up mainly because they were needed for transactions between the metropolises and the colonies. They were also necessary conduits for the conduct of local trade, payment of officers and settlers as well as financing important colonial infrastructures like harbours and railways. Before independence the banking system in Zambia formed part of an inter-connected political and business system which was ultimately joined together in the form of the Federation of Rhodesia and Nyasaland. Five banks operated in the Federation, with three of them running offices in Northern Rhodesia.

After independence, few changes appeared. A few of the banks were taken over by others while many more were introduced. Several reasons can be advanced to explain the sudden increase in the number of banks following independence and despite a near nationalisation of the industry in 1970. These reasons range from profitability of the industry as well as a sense of satisfaction on the part of the banks that future nationalisations are unlikely. The increase also appears to be an acceptance of some of the government's inducements

intended to get banks to mobilise more resources. In the process of this build up of the banking business impressive assets have been accumulated. By 1985 these had reached K4 billion, most of them being liquid assets. The banks also had a sizable amount of deposit liabilities; some of which were in the form of savings accounts and long term holdings of outward bound funds held in a pipeline. These holdings indicate a very favourable situation for increased bank lending, including long term credit. In the next chapter it will be seen how this opportunity has operated in reality and how the legal order facilitates its operation.

CHAPTER THREE
REGULATION OF COMMERCIAL BANKS IN PRE
AND POST INDEPENDENCE ZAMBIA.

3:0 Introduction

Commercial banks like other entities are subject to legal and other forms of control. The requirement to exercise control over commercial banks is induced by various considerations.¹ The most important consideration is to ensure that only people who satisfy certain national objectives or other criteria qualify to engage in the business of banking. Some of the criteria may be the possession of adequate financial capital or ability to run a bank. Another consideration is to provide a system of ensuring that banks are accountable in the way they deal with other people's money. This is because if it is left to their own prudence, some individual banks or bankers may deal in risky transactions which may lead to their collapse and thus erode public confidence in the banking system as a whole. As Boehmler

asserts:

"The basis for regulation is found partly in the desire of government to protect the clients of every bank and partly to promote efficiency of operations of individual banks and the structure as a whole. Present is also the desire to exercise control over the volume of purchasing power existing in the form of bank deposits derived from loans. This control bears most directly upon the amount

1. See some philosophical insights on the subject of regulation, by Jack Ravell; in Jack Ravell (General Editor), Solvency and Regulation of Banks (Bangor Occasional Papers in Economics, No.5 University of Wales Press, 1975) PP.129-131.

of liquid reserve required behind deposits as it serves to limit the total volume of loans and investments the banks may make".²

The achievement of public confidence is therefore a principal factor in the determination of the form and type of regulations the authorities may impose. Without such confidence the functioning of banks becomes a difficult one as their source of funds may begin to dwindle. Furthermore, banks which have no public support become vulnerable to sudden upheavals such as spontaneous withdrawals of cash and cancellations of accounts by members of the public acting sometimes on the basis of mere rumours of wrong doing, indiscreet behaviour or other forms of wrong judgment attributed to managers of banks. But with the belief that their funds are in proper and capable hands aided by the presence of an efficient system of regulation the public's confidence comes naturally and with it the growth of the business.

The exercise of control over banks is also an aspect of a national economic management system. As banks handle the bulk of national financial resources, control over them and co-ordination of their authorised activities becomes crucial. Accordingly regulatory authorities have to ensure that only necessary levels of money are released at a time. They also have to outline the legitimate or urgent purposes for which it may be applied. In the absence of this kind of monitoring and permanent control the activities of commercial banks may lead

2. E.W. Boehmler et al; Financial Institutions (Homewood Illinois: Richard D. Irwin, inc. 1956) P.146.

to unacceptable inflationary pressure which can cause acute unemployment and a high cost of living.

3:1 Sources and Types of Regulations

There are various sources and forms of Regulations affecting banks. Regulations may be legislative or judicial and relate to the form and structure of operating banks as well as to their relations with customers. Regulations may also be fiscal and consist of instructions from the authorities prescribing how commercial banks should go about their loans, interest rates, reserves and foreign payments or even opening hours. In other words they can be strictly risk aversion regulations. On the other hand regulations can be administrative and consist of guidelines and procedures on the creation, management and disposal of securities and other instruments that banks deal in. Strictly however, the distinction is really between the legislative and judicial or common law sources, as the exercise of administrative control almost always stems from some enabling statute, local government legislation or statutory instrument.

In recent years the distinctions between the various types of control have been narrowed down even further as all regulations have come to be seen as parts of the unit called "prudential supervision" of the banking system.³ One of the most comprehensive and recent works on this subject is R.M

3. See Jack Ravell, op. cit.

Pechioli's "prudential supervision in Banking" which focuses on the OECD countries. ⁴ In this work Pechioli shows how the regulations, the modalities of their implementation and the criteria upon which implementation decisions are based form part of a whole unit whose guiding theme is to protect customers, national economies and international cooperation. He breaks down the various components of the supervision into the following:

(1) the institutional aspects of the supervision. At least three aspects are involved here:

(a) there are the bodies which are responsible for the actual implementation of the regulations or supervising the banks. These may be central banks, government Ministries, commissions or institutions.

(b) the course of the supervision and the types of institutions which may be supervised or co-opted into the framework.

(c) Methods of supervision and the criteria to be used

(2) Control over the structures of the banking system, including licensing, branching, attitudes and policies.

(3) Scope and framework of banking activity.

(4) Concentration of risks.

(5) Liquidity requirements.

(6) Capital adequacy and profitability and

(7) market discipline, crisis management and deposit protection.

4. R.M. Pechioli, Prudential Supervision in Banking; Trends in Banking Structure and Regulation in OECD Countries (OECD, 1987)

It is not necessary to go into the details of how these aspects form a core of the regulatory system, as doing so will amount to an unnecessary review of the whole book. It can only be said that these aspects are basic and nearly representative of the regulations or regulated areas of commercial banking in most capitalist and mixed economy countries. For this reason it is significant to observe that Ravell ⁵ and a few others who have examined the subject of regulation of banks also discuss many of them. ⁶ By no means however, are they the only ones. In some countries even such subjects as the nationality of the managers and directors ⁷ or the location of branches within a town, county, or state are regulated. ⁸

Furthermore, it is possible that while in some countries all of Pechioli's items may be subjected to regulation in others only a few of them may be regulated or stressed as the level of development, internationalization, innovation or sophistication may still be low. No uniform or universal method of setting priorities in the regulation of banks can therefore,

5. op. cit.

6. See e.g. Kerry Cooper and Donald R. Fraser, Banking Deregulation and The New Competition in Financial Services (Cambridge Massachusetts: Balinger Publishing Company, 1986).

7. See e.g. Banking Act, CAP700 of the Laws of Zambia (No.43 of 1971) Section 4.

8. See John Jay Knox, A History of Banking in the United States (New York: Augustus M. Kelly Publishers, 1969) P.11.

be attained. Different countries adopt different controls and methods of control depending on their circumstances and priorities. Thus in some countries the licensing of banks and the supervision of their operations are functions performed by the monetary authorities or central banks.⁹ In other government ministries or departments perform these functions. In yet other countries, these functions are performed by more than one body. In these last countries, the general tendency is that the licencing and incorporation functions are performed by a government ministry or department such as a registrar of companies, while the financial aspects of commercial banking are overseen by the central bank. This separation of functions is seen in some quarters as essential for enhancing efficiency and avoiding the corrupt tendencies that may attend concentrated responsibilities.¹⁰ It can however, be speculated that such separations of functions are also a result of the multiplication of positions which is characteristic and typical of bureaucratic establishments. In other words, because various bureaucrats seek to be seen to be in charge of one portfolio or another, the tendency has been to split functions to satisfy them. This as will be seen in the case of the various registration points, some times creates administrative nightmares and can be expensive.

Furthermore, for the reason that the items in Pechioli's

9. See e.g. The Bank of Ghana Act, No.182 of 1963 Section 32(a) and the Ghana Banking Act, 1970. Section 3(1).

10. Margaret Rogers and A.N. Allott, "Introduction and Report of Proceedings", International Conference on Banking and Development in Africa, 19 Journal of African Law [1975] at P.6

list are not necessarily applied at all times in all countries, this work will not examine them in similar sequence. In other words, this work will not take each item, like institutions, liquidity or crisis avoidance and discuss how it is regulated in Zambia. After all in the case of banking in colonial as well as in independent Zambia, many statutes are involved and they don't all cover the same issues. The approach therefore will be to take each statute and highlight its salient features vis-a-vis national requirements or priorities. As seen in Chapter One the main priorities set by the government fall under section 4 of the Banking Act 1971. These relate to the formation and incorporation of banks as well as management and personnel. Before this the policy declarations of the Mulungushi and 1970 reforms emphasised lending to Zambians, restricted borrowing by foreigners, externalisation of profits and called for Zambianization of positions. More recently, the Bank of Zambia Act, 1985 ¹¹ laid stress on fiscal control especially in the light of prevailing balance of payments difficulties and inadequate investment. It also stresses securities, going by its inclusion of a credit guarantee scheme. In between will be discussed the criteria employed in the implementation regulations.

In addition, it is not intended in this work to spend a lot of time discussing the rules relating to the banker and customer relations. These are common law aspects which are adequately covered by standard English texts and need not be

11. No. 24 of 1985.

reproduced here. In line with this study's theme therefore, which is to look at those aspects of regulation of banking which have a bearing on the ability of commercial banks to play a positive role in development, this chapter will concentrate on legislative and administrative regulations. Underlying policies or policy implications of these regulations will be treated within the context of each statute or regulation as and when it comes up, and will not necessarily receive a separate treatment. The first step looks at regulation of banks during the colonial period.

3:2 Regulation of Banks in Rhodesia and Nyasaland

Prior to the passage of the Bank of Rhodesia and Nyasaland Act in 1956 ¹², there existed neither in Northern Rhodesia nor for that matter in any of her partners in the Federation of Rhodesia and Nyasaland, any specific laws providing for the formal regulation of the establishment and conduct of the business of commercial banking. The question whether English law applied to the banks there remains shrouded in the confusion surrounding the terminologies and references of the reception statutes. ¹³ According to the Northern Rhodesia order-in council of 1911, ¹⁴ for instance,

12. Federal Act No.2 of 1956.

13. See e.g. Robert Seidman, "A note on the construction of the Gold Coast Reception Statutes" 13 Journal of African Law [1969] P.49.

14. This order-in-council revoked the North-Eastern and North Western Rhodesia orders-in-council and merged the two territories into one jurisdiction on 17th August, 1911.

English common law, doctrines of equity and statutes of general application which were in force in England on August 17th, 1911¹⁵ were to continue to apply in the territory. There is doubt however, over the significance of the reception date especially in determining the applicable principles of the common law or doctrines of equity. This doubt is not helped by the absence of a settled climate over the meaning of the terms "common law" and "doctrines of equity" themselves. There is also doubt about precisely which pre-1911 English statutes are statutes of general application. ¹⁶ In a Nigerian case of B.A. Lawal and others V. Messrs A. Younan and Sons and Royal Exchange Assurance Company Limited, ¹⁷ Brett F.J. said for instance, that one group of enactments of the Parliament of England, Great Britain or the United Kingdom which may be applicable in a dependent or formerly dependent territory are those governing commercial dealings. ¹⁸ He cites for this purpose the Statute of Frauds, the Infant Relief Act, 1874 and the Sale of Goods Act, 1893. But he cautions that in the case of some statutes such as the Statute of Frauds or the Infant Relief Act, they

15. This is the date when the order-in-council became effective in terms of the Northern Rhodesia proclamation No.5 of 1911. See also P.121 below.

16. William, L. Chruch, "The Common Law and Zambia", in Muna Ndulo (Ed) Law in Zambia (East African Publishing House, 1984) P.17.

17. (1961) 1 ALL. N.L.R. 245.

18. at P.255. In Zambia this aspect is now catered for by English Law (Extent of Application) Act, and the British Acts Extension Act. See P.122 Below.

may be excluded if the transaction is one properly governed by native law and custom. Surely if a statute can be excluded by an unwritten native law or custom without any specific provision to that end then its hold in that particular jurisdiction is tenuous and it may be unsafe to rely on it. Furthermore it is clear that what constitutes a transaction properly governed by native law or custom can be a controversial matter.

The controversy is not helped by what the judge says later on that; "with few exceptions statutes which are applicable have this in common, that grave inconvenience would follow if they are held totally inapplicable". The decision whether or not there will be inconvenience is sometimes an emotional and subjective one, which again shakes the hold of any English statute on dependent colonies. Even the court's attempt, in that particular case, to set certain criteria which should be considered in applying English statutes does not however, remove the whole controversy. Some of those criteria are that a court should consider whether the statute in issue was designed to regulate a certain procedure or class of the community without any contemplation for the colonies, and whether there are any local circumstances which might make the statute inapplicable or which can lead to results which are manifestly unreasonable and unintended. ¹⁹ Again, it is clear that the determination of such issues is an entirely

19. at P.255

subjective matter. Subjectivity can also be seen in respect of decisions relating to the doctrines of equity, especially those involving alleged conflicts between customary law and rules of natural justice. As Ajayi argues in reference to the supervisory role of colonial officials over native courts:

"the most important of all, as the views of individual officers as to what is or is not repugnant to natural justice, equity and good conscience necessarily vary, one outstanding consequence of their supervisory functions has been the introduction of an element of instability and uncertainty into the development of customary law" ²⁰

In addition Ajayi points to the numerous contradictions in the perceptions of "English" courts on the impact of certain customary matters on natural justice, equity and good conscience. ²¹ Similarly the issue of the "reasonable man" test which may have to be considered in applying some of the English statutes is another indication of the subjectivity and therefore the difficulty of applying these statutes in traditional African conditions. In one case for instance, a court went so far as to suggest that a belief in witchcraft by

20. F.A. Ajayi, "The Failure of Customary Law in Nigeria", in British Territories in Africa, The Future of Customary Law in Africa, Symposium Collogne - Amsterdam 1955, organised by the Afrika Instituut - Studiencentrum Leiden, in collaboration with The Royal Tropical Institute - Amsterdam (Leiden: Universitaire Pers Leiden, 1956) P.48.

21. Ibid. P.50. See also Bamgbose V Daniel [1954] 3 Weekly Law Reports 561.

an African is not reasonable, and that the test of a reasonable man should be that of an ordinary man in the streets of London. Although this opinion has since been overruled,²³ that it was ever expressed shows, together with the dilemmas of the repugnancy clauses, that even if it was possible to indicate precisely which statutes applied to the Federation of Rhodesia and Nyasaland, it would still be hard to apply them. Perhaps the only consolation for a practitioner who needed to apply English statutes or the common law and principles of equity in 1911 was that Africans were largely excluded from the banking business and as such he was unlikely to encounter a conflict of laws situation.

As far as the situation before the reception statutes were promulgated was concerned, W. Forsyth's assertion that "an English man takes the common law with him to places acquired by treaty or grant, but that when the crown has once granted a legislature to a conquered or ceded colony, it cannot afterwards exercise with respect to such a colony its former powers of legislation"; seems to be generally accepted.²⁴

Even without the problem of the terminology of reception statutes, the question of sorting out which English laws or

22. See Chabi Jana V The King, 12 East African C.A. 96.

23. See e.g. Rex V. Fabiano Kinene 8 E.A.C.A. 96. (Uganda 1941). See also R.V. Matengula [1951] 5 N.R.L.R. 148.

24. W. Forsyth, Cases and Opinion on Constitutional Laws and Various Points of English Jurisprudence (London: Stevens and Hayes, 1869) P.16.

statutes applied in Rhodesia and Nyasaland would still be a difficult one. This is because as far as banking is concerned there was never in England a single specific or consolidated legislation addressed to it before 1979.²⁵ There were instead, numerous statutory enactments and provisions which had a bearing on the subject such as the Bank Charter Act, 1844. The Stamp Act, 1853²⁶ was the first statute to introduce the word "banker" in relation to instruments not drawn payable to bearer on demand. As far as the credit relations between the banker and his customer were concerned, the relevant Act was the Debtor's Act 1869. Other aspects came under the provisions of the Crossed Cheques Act, 1876, the Banker's Books Evidence Act, 1879 and the Bills of Exchange Act, 1882. The Revenue Act, 1883 and the Moneylenders' Act, 1900 were also relevant in considerations about whether a given entity or person was a bank or not.

Other statutes that applied to Banks in England before 1911 were the Draft on Banker's Act, 1856²⁷, the Bills of Sale Act, 1878²⁸, the Infant Relief Act, 1885, the Partnership Act, 1890 and the various companies acts that were enacted. In addition, banks were subjected to the common law principles of

25. This changed with the enactment of the Banking Act, 1979. C.37. This Act established a two-tier system, dividing deposit taking institutions into recognised banks and licensed deposit-takers, and set out broad principles for the authorisation and continuing supervision of both groups by the Bank of England. See R.M. Pechioli op. cit. P.23.

26. Re-enacted in 1891. See Maurice Megrah and F.R. Ryder, Paget's Law of Banking (London: Butterworths, 1966)P.1

27. Re-enacted in 1858.

28. Re-enacted in 1882.

bailment, contract, agency, negligence and doctrines of equity.

As stated earlier, it is not clear whether all the statutes outlined in the preceding paragraphs were statutes of "general application" or not. Consequently it is not possible to determine whether all of them or just a few of them applied in Northern Rhodesia. Even after 1911 no specific legislation on the subject of banking appears to have been enacted. The reason for this could have been that, only two branches, belonging to the Standard Bank and Barclays Bank respectively, operated in the territory. As such there was not enough pressure to compel the authorities to enact legislation to control their operations. Even after federation with Southern Rhodesia and Nyasaland administrative control by the parent offices in South Africa and London seems to have been viewed as sufficient. In terms of licensing, because the branches involved were not companies in their own right, it seems that simple methods of administrative approval were used instead of incorporation.²⁹ The only requirement seems to have been that new branches had to comply with the provisions of the Business Names Registration Ordinance of each territory.³⁰ While most of the branches appointed local boards of directors, these acted mainly as advisors and did not effect the day-to-day

29. See James A. Henry Sixty Years North of the Limpopo (Salisbury: The Rhodesian Printing and Publishing Company, 1953)

30. In the case of Northern Rhodesia. This was No. 29 of 1931, revised by No. 5 13 of 1932, 2 of 1938. 19 of 1950, 19 of 1954 and 24 of 1955. See also government Notices 279 of 1964 and 497 of 1964.

operations of the branches. ³¹ Local managers maintained direct relations with their immediate regional supervisors and the main ones in London. Thus, although these local managers had some discretionary delegated authority, it was only to a point. Their authority applied, for example, to matters of advances, staff appointments and administrative expenditure. On matters of general policy, such as investments in local registered stock and changes in interest rates paid on deposits or charged on advances, local managers sought the guidance of head office managers, albeit with recommendations of their own in some cases.

By virtue of operating on the same ground, guided by the same principles and objectives such as observing sound banking practices and achieving profitability, the various head offices of the banks operating in Rhodesia and Nyasaland provided remarkably uniform guidelines. They were helped in this by the fact that their employees were members of the same settler group with identical attitudes and training, sharing the same social amenities and dealing with the same customers or customers who shared similar needs. Other sources of uniformity were created by the existence of a detailed agreement amongst Rhodesia and Nyasaland's banks which harmonised their charges

31. R.A. Sowelem, Towards Financial Independence in a Developing Economy (London: George Allen and Unwin Ltd. 1967) P.63

and therefore prevented run-away price competition from arising. The co-ordination and administration of inter-bank arrangements by one of the banks, viz, the Standard Bank, also offered another source of order.

3:3 Registration and Commencement Requirements After 1956

The seemingly adequate arrangements outlined above were not without short comings. In his report, Mr Mynors - an official of the Bank of England who had been invited in 1948 to investigate the suitability of a central bank in Southern Rhodesia, referred to some of the anomalies presented by the situation which existed then. ³² The report which was relevant to Northern Rhodesia and Nyasaland by virtue of the connections which their banks had with those of Southern Rhodesia, and by reason of the approaching federation of the three territories, recommended that "consideration should be given to the taking of statutory powers to licence banks operating in Southern Rhodesia". The author further advised that such licencing measures would ensure that new comers were not able to open business without first satisfying the government that they were likely to be adequately capitalised and soundly conducted. Although the report did not expressly say so, it implied that statutory measures would also achieve the desired regulation of

32. The Report of H.C.B. Mynors, entitled "Southern Rhodesia Report on the Question of a Central Bank" was unpublished; See R.A. Sowelem op. cit. P.31.

the use of the word "bank" itself. Such regulation would ensure the continuation of an aura of respectability and trust that banks ought to maintain. ³³ It would also be in line with the prevailing notion that a degree of control over banks was necessary to achieve control over the economic destiny and activity of the country. ³⁴ Mr. Mynors did not however, think that a central bank was needed to achieve these goals, although the Federal Government in deciding to establish one attributed this to him. ³⁵

3:3:1 The Bank of Rhodesia and Nyasaland Act, 1956

The Central Bank of Rhodesia and Nyasaland was established by a Federal Act of parliament in 1956. ³⁶ Its establishment provided a more comprehensive mechanism of regulation as opposed to the hitherto informal system provided by the rather distant regional and head offices. Under section 22 of the Act the establishment of banks, other than the four

33. Margaret Rogers and A.N. Allot, supra note 10 P.3. Mr Mynors' recommendations could also not have been far from the official colonial attitude which sought, in the long run, to protect unsophisticated colonial people who might later have business deals with banks. These people might have wrongfully believed that they were depositing their money in banks when the repositories were not banks at all.

34. See commission on Money and Credit, The Commercial Banking Industry (Eaglewood Cliffs N.J.: Prentice Hall Inc., 1962) P.85 See also R.A. Sowelem op. cit. PP.30-46.

35. Federal Assembly Debates, July 1959 Col.2152-3.

36. No.2 of 1956.

commercial banks which were already in operation at the time,³⁷ became subject to prior permission by the Federal Minister of Finance and to any conditions that he might have imposed. The Act defined a bank widely as "any person or institution which carried on a business of which any part consisted of the acceptance of deposits of money withdrawable on demand or on a fixed or determinable date". Building societies, Land and Agricultural banks, post office savings banks and local authorities were however, exempted from this definition and from the provisions of the Act.

The Act assigned responsibility for regulating the monetary system to the bank. The bank became the sole issuing authority of legal tender. It fixed and announced the minimum rates of discount and rediscount.³⁸ The external value of the currency was however, determined by the Governor-General of the Federation.³⁹ For the purpose of controlling the banking system, the bank was equipped with a wide variety of powers. Under Section 23 of the Act, every commercial bank was required to maintain with it a minimum cash reserve balance against its

37. See Chapter Two.

38. Section 9 under section 10 bills of exchange or promisory notes eligible for discount at the central bank were to have a maximum maturity of four months if drawn for commercial purposes, or six months if drawn for agricultural purposes.

39. R.A. Sowelem op. cit.

demand and time liabilities to the public in the Federation. The actual volume of these required reserves was to be calculated in respect of each bank on the twenty first day of each month. In terms of criteria, the calculations were based on the liabilities of each bank at the end of the preceding month. The Act also empowered the bank to vary the minimum cash reserve requirements between 6 and 25 per cent of demand liabilities and 3 and 10 per cent of time liabilities, subject to the provision of reasonable notice to the commercial banks before the coming into effect of such variations.⁴⁰ Under the Act, demand liabilities were defined as those which were payable within thirty-days, while time liabilities were defined as those made payable or subject to not less than thirty days notice.

The Bank of Rhodesia and Nyasaland Act was amended in 1959.⁴¹ Under the amendment, demand deposit subject to the cash reserve requirements became a net of deposits secured by a pledge of securities issued by the Government of the Federation or of any territory which had a final maturity date of not more than twelve months. The amendment also empowered the bank to vary the minimum liquidity ratio of 25 per cent which commercial banks were required to maintain under the old

40. Section 24.

41. By the Bank of Rhodesia and Nyasaland (Amendment) Act, Federal Act No.24 of 1959 which came into effect on July 1, 1960.

provision. The Bank however, could not increase such ratio without the permission of the Minister. Rather curiously, no specific limit was imposed. A variation lower than 25 per cent was however prohibited unless the bank satisfied the Minister that it would be in the public interest to do so. Under such a circumstance, the Minister was empowered to fix a lower percentage, to be effective for such a period as he specified.

Finally under section 6 of the amendment the bank was authorised, if it thought it necessary in the public interest, to request information from banks. It could also make recommendations to them, and pursuant to the permission of the Minister, issue directions to any banker for the purposes of securing compliance with such request or recommendation. This exercise of power by the bank was also limited by the proviso that the making of such requests or recommendations was not to be in respect of the affairs of any particular customer. It was also required that before issuing directives to any banker, such banker was to be given an opportunity to make representations to the Minister. Stiff penalties were provided for under the Act in the case of non compliance with its provisions.

3:3:2 The Banking Act, 1959

The placing of provisions laying down procedures and requirements relating to the registration of banks in the statute of the central bank was viewed with some misgivings. On

the one hand it was felt that it deprived the politicians and the government of any power over the functions of commercial banks. On the other, it was considered that the requirement to have ministerial approval in connection with registration and other regulations governing banks could be used for political ends and was onerous and impracticable.⁴² Accordingly a separate but more specific and detailed Act known as the Banking Act, 1959⁴³ was enacted. It required the Minister to appoint a Registrar of banks and financial institutions who would administer the Act's registration provisions and fulfil certain other responsibilities specified in the Act. With regard to registration itself, the Act required any persons engaged in the business of banking in the federation to register in one of four classes of institutions; that is; as a commercial bank, acceptance house, discount house or financial institution. Following this categorisation, the Act defined banking business as being one:

42. For instance, referring to section 22 of the Bank of Rhodesia and Nyasaland Act during debate on the Banking Bill, the Minister of Finance argued that it gave him wide powers to impose conditions on any institution which accepted deposits from the general public. These conditions, he pointed out, could not be followed up to see if they were fulfilled. See Federal Assembly Debates, July 27, 1959. Col.2146-7.

43. No.23 of 1959.

"of accepting deposits of money withdrawable or repayable on demand or after a fixed period or after notice and the employment of those deposits, in whole or in part, by lending or any other means for the account and at the risk of the person accepting such deposits."

A person was deemed to be accepting deposits not withstanding that he accepted desposits which were limited to fixed amounts or that certificates or other instruments were issued in respect of those deposits. As with the central bank's statute the acceptance of money by building societies, co-operatives, land and agricultural banks, local authorities and post-office savings banks was exempted from the provisions of this Act. Also exempted was the acceptance of money against debentures.

Eight institutions which were in operation at the time of the Act's enactment were obliged to register immediately upon its coming into force. These included the five commercial banks; two acceptance houses ⁴⁴ and one discount house. ⁴⁵ There was also provision for other institutions to apply for registration within a specified period. In the exercise of his powers the Registrar was required to satisfy himself that applicants complied with the legal provisions relating to their business. These included, in the case of a registered bank whose head office was situated outside the federation, a requirement to maintain a local capital and unimpaired reserve

44. The Merchant Bank of Central Africa, and The Rhodesian Acceptances.

45. The Discount Company of Rhodesia.

funds not exceeding £250,000. In that of a registered bank or acceptance house whose head office was situated within the Federation, the requirement was to maintain a paid up capital and unimpaired reserve funds amounting to no less than £250,000. The Registrar's powers on these matters were however, discretionary and were never exercised during the period under discussion. Furthermore, in the case of the latter requirement, it only applied to acceptance houses, as all the commercial banks operating in the Federation were merely branches of foreign banks. The other powers of the Registrar were that in the case of applicants whose head offices were situated outside the Federation or more than half in nominal value of whose equity share capital was held directly or indirectly by persons outside the federation, he would, subject to the approval of the Minister, reject their applications if he was of the opinion that it was in the public interest to do so. With respect to any person already registered the Registrar was also empowered to cancel the registration if that person contravened any of the existing regulations or misrepresented the facilities which he offered to the public. Registration could also be cancelled if any registered person engaged in undesirable methods of conducting business. ⁴⁶

For the purposes of enabling the Registrar to perform

46. See footnotes 62 below for observations.

his duties, the Act required registered institutions to submit a number of returns showing their assets and facilities regularly on prescribed forms. Additional documents or information deemed relevant could also be demanded by the Registrar and registered institutions were obliged to furnish them. The Registrar was also empowered, subject to the approval of the Minister, to appoint inspectors to investigate the affairs of any registered institution. Before or during any such investigation, the Minister could require the institution concerned to deposit with the Registrar such approved securities as the Minister deemed sufficient to meet the liabilities of the institution.

The Act also specified a number of transactions which registered banks and institutions were forbidden to undertake. These included a stipulation that no registered bank or institution was to purchase shares in its own banking business or make any loans or advances on the security of such shares. Obviously the underlying philosophy behind this provision was to prevent any diminishment in the level of a bank's capital that might have jeopardised the interests of its shareholders and customers. But nowadays with extra forms of security, including reserves and insurance a provision like this may no longer be relevant. But even at that time, it was something of a duplication as the Companies Ordinance already dealt with it.

purposes of conducting their business or providing housing amenities for their staff. This again was aimed at preventing risks as land speculation was risky and could tie down a bank's resources to the detriment of its customers. Under today's highly profitable real estate business and more predictable housing prices, it may be unrealistic to prevent banks from engaging in this socially desirable function of providing housing. However, even then the Act provided that the securing of debts on immovable property and, in the event of default in payment, the holding of such immovable property until realisation at a suitable time, was permissible.

Finally, other notable aspects included the provision that only commercial banks or acceptance houses were allowed to accept deposits of money withdrawable by cheque, draft or order payable on demand. An amendment to the Act stipulated that except with the consent of the Minister of Finance, no registered institution other than a bank, acceptance or discount house was permitted to accept deposits of money withdrawable on notice of less than seven days. ⁴⁸

48. Banking (Amendment) Act, 1961. Section 4.

3:3:3 Other Legislative Regulations

3:3:3(a) The Southern Rhodesia Currency Board

There were a few other enactments which had to be taken note of or complied with by banks before independence. The most significant was that controlling the issuance, treatment and employment in various ways of currency. Before 1938, the banks were free to issue their own notes. They also dealt in English and South African money. Between 1938 and 1954 the issuing of currency was a responsibility of the Southern Rhodesia Currency Board. Established under the provisions of the Southern Rhodesia Coinage and Currency Act,⁴⁹ the board's responsibilities were extended to both Northern Rhodesia and Nyasaland by a monetary agreement of the three governments. Although it was not a monetary authority in the conventional sense, i.e. in the sense of a central bank with statutory powers to regulate the monetary and fiscal operations of financial intermediaries, the board was empowered by the Act to be the sole supplier of Southern Rhodesia legal tender. This power obliged the commercial banks to look to it alone for all their currency requirements. On March 12, 1954 the board became a federal institution following the creation of the Federation and its title was changed so that it became the Central African Currency Board.

49. Southern Rhodesia Act 32, 1938.

3:3:3(b) The Constitution of the Federation of Rhodesia and Nyasaland

The other form of regulation emanated from the constitution of the Federation itself under Article 19, for instance, the Federal Parliament was given exclusive responsibility for, among other things, coinage, currency and legal tender. It was also responsible ultimately for the control of banks and banking, other than land banks. The passing of the Bank of Rhodesia and Nyasaland Act, which has already been referred to in 3:3:1 above constituted an example of the exercise of that control.

3:3:3(c) The Bank of Northern Rhodesia Ordinance

The Bank of Rhodesia and Nyasaland Act was superseded in 1963 by the Bank of Northern Rhodesia Ordinance.⁵⁰ That ordinance created a separate central bank for Northern Rhodesia following the dissolution of the Federation. The decision to set up a separate Central Bank in the territory was based on the expert advice of a senior Bank of England official who was invited to advise the territorial government on monetary control after Federation.⁵¹ The details of the official's report are unavailable, but it was revealed in

50. No.24 of 1964.

51. See Mr Wina, Minister of Finance in Northern Rhodesia, Hansard No.3, 9th July to 27th August 1964 PP.111-127.

Parliament that the report recommended the setting up of a Central Bank in the territory to issue currency and perform all the other functions of a central bank.-

3:4 Regulation of Banks After Independence

3:4:1 The Bank of Zambia Act, 1964

Following the attainment of independence, the Bank of Zambia replaced the Bank of Northern Rhodesia in accordance with the provisions of the Bank of Zambia Act.⁵² The Act, however, merely incorporated new Zambian terms and denominations while the basic content of its provisions remained the same as those of the repealed Act.

3:4:2 The Banking Act, 1965

The Banking Act, 1959 was repealed by the Banking Act, 1965⁵³ following the attainment of independence. But apart from incorporating a few new Zambian terms, denominations and requirements, this new Act retained virtually all of the outgoing Act's provisions. Some of the new requirements were that no person other than a company was to be registered as a bank in Zambia. In addition, any person registered as a bank was required to maintain a principal administrative office in Zambia and to appoint a chief executive officer.

52. No.37 of 1964.

53. No.No.1 of 1965.

A few new restrictions were imposed to curtail interference by foreign based head offices involving the change of names, business or memorandum of association of their Zambian branches without the consent of the Registrar. Neither could such head offices amalgamate nor transfer local branches without the approval of the Minister. This was politically important as some removals could leave some important electoral areas without banking facilities. Banks whose head offices were situated in Zambia were required to maintain a paid up equity capital and unimpaired reserve funds amounting to not less than K300,000. Those whose head offices were situated outside the country, on the other hand, had to maintain capital and unimpaired reserve funds determined at the discretion of the Registrar but not exceeding K500,000.⁵⁴ Provisions relating to the maintenance of minimum specified liquid assets and the submission of statements and limitation of the scope of business transactions were similarly included.

3:4:3 The Banking Act, 1971

In 1971, following the failure by the government to implement its previous year's reforms of the financial sector, a new banking Act⁵⁵ was enacted. The Act's principal provisions have already been referred to in chapter one and they include the following:

54. Section 18.

55. The Banking Act, 1971, No.43 of 1971.

(i) No person shall carry on banking or financial business unless he is locally incorporated and registered.

(ii) No bank shall remain registered unless at least half of its directors are citizens of Zambia or established residents.

(iii) Any commercial bank can carry on the business of merchant banking.

(iv) Every bank in which the government holds all or some of the shares is required to maintain a paid up equity capital amounting to not less than K500,000.

(v) Every bank without government participation is required to maintain a paid up equity capital amounting to not less than K2 million.

To command public confidence and facilitate recovery in the event of a winding up or insolvency all financial institutions, including banks, are required to maintain, in addition to equity, specified reserve funds. ⁵⁶ These reserves may amount to either 20 per cent or 50 per cent of a bank's equity capital depending on the size of its paid up equity capital. ⁵⁷

The other important provisions of the Act are that:

56. These are prescribed by the Bank of Zambia under Section 42 (1)(b) of the Bank of Zambia Act, 1985.

57. Section 19(a) and (b).

(i) if the Registrar is not satisfied by an applicant for registration, he shall by notice sent by registered post inform the applicant that he proposes to reject the application and of his reasons for doing so. 58

(ii) Where more than half in nominal value of the equity share capital is held directly or indirectly by persons outside Zambia, and where the registrar is of the opinion that it would not be in the public interest to approve the application, he shall, with the approval of the Minister; reject the application, and shall by notice sent by Registered post inform the applicant. 59

(iii) Where registration is obtained by fraud or mistake or where a bank has, after notice from the Registrar, contravened any provision of the Act, or that of the Bank of Zambia Act and or is engaging in undesirable methods of conducting business, the Registrar shall by notice inform that bank that he proposes to cancel its registration. 60

The only check on the Registrar's discretion is that his actions are subject to review provided the applicant lodges a complaint within a stipulated number of days. 61 The reviewing authority is the Minister and his determination is final. Here

58. Section 5(3).

59. Section 5(4).

60. Section 6.

61. Section 7.

it can be observed that there may be occasions for judicial contestation. Such occasions as where a malicious and unjustified campaign may lead to a cancellation or its confirmation can surely not be barred from judicial eyes. However, without engaging in too much detail, one might hasten to add that on a similar provision in a Nigerian Banking Ordinance, a court ruled that the right to appeal or a mere possession of a licence as a bank, are not civil rights.⁶² In other words where the Registrar and later on the Minister, follow a proper procedure a suffering banker can not afterwards go to court and claim that his civil rights within the terms of the constitution have been infringed. He can only do so if some other kind of injustice has been inflicted.

Other general provisions of the Act stipulate the terms of operation of banks and financial institutions.⁶³ These are that every bank must maintain a principal office and appoint a chief executive officer and chief accounting officer. Every bank is required to display its name and statement of its registration as a bank. Such name may not be altered without the consent of the Registrar. Except with the consent of the Minister no person other than a bank shall use the term "bank" in its name or title. No alterations to the memorandum of association or other constitution of a bank's business may be

62. See Merchants Bank Ltd V. Federal Minister of Finance (1961) All.N.L.R. 559.

63. See Sections 11, 12, 13, 14, 15, 16 and 17.

undertaken without the consent of the Registrar. Similarly no amalgamations or transfers of business may be undertaken in the absence of a written approval by the Minister.

With regard to other financial requirements, the Act stipulates that every bank shall maintain a minimum amount of liquid assets prescribed by the Bank of Zambia Act.⁶⁴ The Registrar is required to specify the method of valuating such minimum liquid assets. The Act proceeds to describe what amounts to liabilities to the public as well as what constitutes liquid assets. In terms of Section 21 (2) (b) liabilities to the public shall not include liabilities to an equity shareholder of a bank who resides outside Zambia. Those liabilities do not also include a bank's acceptance liabilities or liabilities which are incurred in the business of merchant banking. Liquid assets on the other hand are comprised of all or any of the following:⁶⁵

- (a) Gold coin or bullion
- (b) notes and coin which are current legal tender
- (c) balances at the Bank of Zambia including minimum reserve balances
- (d) money at call with any other bank

64. Formerly section 29 of Bank of Zambia Act, CAP 699 - now Section 42 of Bank of Zambia Act, 1985.

65. Section 21(3).

(e) treasury bills issued by the Government

(f) bills of exchange and promisory notes eligible for discount at the Bank of Zambia

(g) local registered securities issued or guaranteed by the Government which have a final maturity date of not more than six years and such other securities as the minister may approve

(h) items in transit between banks, between branches of banks and between branches and head offices of banks;

(i) such other assets as the Minister may from time to time approve.

No portion of the assets constituting the liquidity assets which a bank is required to hold under the minimum ratio provision may be pledged or otherwise encumbered except with the approval of the Registrar. Failure to maintain minimum liquid assets as specified by the Act at the end of each business day is punishable by a fine of four hundred Kwacha in a court of competent jurisdiction.

Other provisions are that only banks may advertise or solicit deposits of money from the general public. And as in the other statutes already referred to, no bank or financial institution may purchase any of its own shares or make loans or advances on the security of such shares. This again is a duplication as the Companies Act already prohibits such matters. Banks are similarly prohibited from engaging in the

wholesale or retail trade, including the import or export trade, except where these services are undertaken as part of satisfying a debt due to the bank concerned. Indeed even then, such services may be undertaken only for so long as is necessary. As will be seen in chapter six, this provision introduces a restriction which may be unnecessary in modern times as banks elsewhere are free to participate in their customers' businesses both as shareholders and managers.

Banks in Zambia are also not allowed to purchase, acquire or take on lease or hold immovable property as an investment or by way of trade. There are however some exceptions to this last provision. These are that where the immovable property is acquired or held as security for a debt, this is completely legitimate. Similarly, it is legitimate for a bank to hold or acquire immovable property as a result of a default of repayment of a debt for which it is permitted to sell the property as soon as possible. A bank may also let any immovable property or part of it for purposes of conducting its business. It may also hold immovable property for the purposes of providing housing or amenities for its staff. As said earlier in these days of rising property prices it is in fact doubtful whether there is any wisdom in putting restrictions on banks to invest in immovable property.

Every bank is required to prepare and submit in a prescribed manner a number of statements. These include statements of its assets and liabilities to the public, liquid

assets held as part of the minimum liquidity requirements, balance sheets and profit and loss accounts certified by an auditor. The existence of this latter provision helps seal off the loophole left by the silence of the Companies Act on these matters. ⁶⁶ In addition, the Act provides that, where a bank wilfully fails to comply with the provisions of the Act the Registrar may require it to do so. Furthermore, the Registrar may carry out investigations into the affairs of any bank whenever and as he sees it necessary to do so. Alternatively, an inspector or inspectors may be appointed by the Registrar, with the approval of the Minister, to carry out such investigations. ⁶⁷ When carrying out the investigations, the investigators enjoy the same powers, rights and privileges as those conferred upon a commissioner by the Inquiries Act. ⁶⁸ For this reason the mode of holding an inquiry which is specified under that Act shall apply. At the end of any investigation, the investigators are required to supply the Minister with a report. The Minister may recover the cost of the investigation from the bank concerned. The Minister may require erring banks to rectify their errors. He may also instruct the Registrar to cancel the registration of the bank and to notify the bank in writing of such cancellation including the reasons therefore.

66. See chapter one P.29.

67. Section 36.

68. CAP 181.

The Minister has also got powers to require every bank to deposit with the Registrar such approved securities as he may deem sufficient to meet its liabilities to the public before or during the course of an investigation or during cancellation.

Finally, the Act requires all banks to engage the services of an auditor who shall be approved by the Registrar. It also specifies a number of characteristics which may disqualify any person from becoming a director of a bank. The Act also specifies a number of penalties for failure to comply with the provisions of the Act or making false statements. The Registrar is required to submit a report to the Minister on the operations of all the banks within six months from the first of January each year.

3:4:4 The Bank of Zambia (Amendment) Act, 1971

This Act was enacted to incorporate some of the policy changes that were initiated following the failed attempt to take over the financial sector in 1970. The Act amended the Bank of Zambia Act, 1964 to provide that the granting of acceptance facilities could be undertaken by all registered commercial banks. This decision was based on the notion that Zambia's stage of development was such that it did not justify the existence of a separate acceptance house. ⁶⁹

69. See Mr. Chona (Vice-President), The Bank of Zambia (Amendment) Bill 1971; National Assembly Debates 26th November, 1971. P.195.

3:4:5 The Bank of Zambia Act, 1985 ⁷⁰

This Act replaced the Bank of Zambia Act, 1964 and by implication the amendment of 1971. It also replaced the Currency Act ⁷¹ which was enacted after independence to cater for the administration of currency in the country.

This Act is a consequence of the grave economic hardship that have beset the country during the present period. ⁷² Its enactment was aimed mostly at improving the country's balance of payments situation. It was also aimed at liberalising the control of credit and money supply so as to provoke a more dynamic investment in production. This concern with the country's economic crisis has made itself more evident in the area of monetary management. Thus, for the first time in the country's history, an Act of Parliament has required that the Governor of the Bank and his deputy must possess recognised professional qualifications and experience in financial matters. It is also for the purpose of enabling the Bank to possess enough latitude in the management of the monetary system that the Act leaves the exercise of many of the Bank's powers to discretion. The Act, for instance, provides from time to time that the Bank may act in one way or another without necessarily having to consult any other authority for approval.

70. No. 24 of 1985.

71. CAP 598.

72. See L.J. Mwananshiku (Minister of Finance and National Commission for Development Planning) Daily Debates No.697, 10th December 1985 P.384.

73. See e.g. Sections 42,43,44,(2) and 45 etc, (emphasis added).

One of the Act's major innovations is the introduction of a Credit Guarantee Scheme to be administered by the bank. The aim of the scheme is to provide protection to financial institutions and banks against losses incurred by them when providing loans or making advances to small enterprises. Hitherto banks and other financial institutions have been reluctant to give loans freely to small enterprises because of the high risks involved. In most cases these enterprises are not managed by properly qualified persons and they are often unable to provide the necessary securities as they lack fixed properties and other traditional securities. Their ability to pledge products ahead of actual production is unfortunately diminished by the absence of any guaranteed access to markets.

The Act provides that the Bank of Zambia may operate the scheme and it may establish for that purpose a fund. Financial institutions claiming benefits under the scheme are however, required to act in good faith in the making of their advances and subsequent claims. They are also required to act in accordance with prudent banking practice. For this reason they are expected to ensure that the projects they lend to are, in the first place, technically feasible and economically viable. The Minister is entitled to impose conditions in relation to the operations of the scheme.

Unlike the previous statutes, the 1985 Act also authorises the bank to act as banker for parastatal

organisations or any other person as the Minister may approve.⁷⁴ There is no justification for extending the bank's facilities to parastatals and individuals. The only explanation is that this provision is perhaps aimed at extracting bigger resources for financing the government's deficit than is apparently the case. Those liabilities can also be employed to alleviate the hardships experienced by vital industries such as the Mining Companies and agricultural co-operatives in obtaining funds by lending out some of the excess funds.

The Act has also made modifications to the exchange control regulations and the administration of interest rates.⁷⁵ Commercial banks can now fix both the deposit and lending rates in accordance with their liquidity levels. According to African⁷⁶ the motivation for this change is the belief that by offering attractive returns on deposits, commercial banks will be able to contribute to the raising of the savings ratio to GDP in the domestic economy and by charging realistic rates to borrowers, they will improve the quality of private investment as scarce resources will get channelled to the most deserving uses. To supplement these efforts the legislation encourages

74. See e.g. Sections 4(2) (f) and 43(1).

75. In fact the bank has authorised banks to impose their own rates, so as to encourage competitive lending. See Bank of Zambia Quarterly Finance and Statistical Review, Vol.17 No.3, September, 1985 P.7.

76. African (An International Business Economic and Political Monthly) Published by African Journal. London No.173 January, 1986.

the central bank to set up a more attractive financial market in domestic economy to sell and buy treasury bills.

Apart from the foregoing innovations, the Act contains the usual provisions specifying the functions of a central bank. The first parts deal with the establishment of the bank, its functions, capital, profits the general reserve fund and other funds. These are followed by the administration of the bank, its role as the sole issuer of currency and powers to manage the country's foreign exchange reserves, balance of payments, minimum liquidity ratios and reserve requirements. Then comes the bank's functions as supervisor of banks and financial institutions. The Act empowers the Bank to act as banker, fiscal agent and advisor to the government, including government boards and agencies. The last parts deal with the Credit Guarantee Scheme, the bank's permitted and prohibited business activities and the bank's power to call for information from any person or financial institution as well as to appoint inspectors to carry out inspections of the accounts of financial institutions. Following every inspection the inspectors are required to make a written report to the Minister. Finally the Minister is authorised to issue further regulations by statutory instruments as and when appropriate. It can only be observed that by restricting the power of inspection to accounts only and not to establishing whether banks are complying with government objectives in makingans the Bank of Zambia's regulatory authority is of very

limited value. The other inspections that may be instigated by the Registrar of banks have, as has been seen, no bearing on the subject of ensuring that loans are made with Government policies and objectives in mind. These latter inspections are largely concerned with ensuring that the provisions of the Banking Act relating to registration, capitalisation and other administrative requirements are complied with. Thus where a bank observes all these requirements and keeps its books in order, but withholds funds from those who would put it to productive use, there is absolutely nothing that can be done, except for the authorities to come up with the securities and guarantees that would satisfy that bank's security requirements before it can lend out money to the most needy. In other words, the authorities have no power to require that the bank must initiate steps to meet government objectives while ensuring that prudent banking is observed.

3:5 Other Legislative Enactments

Aside from the foregoing enactments, there are a few other statutes whose provisions have a bearing on banking. Some of these enactments may in fact, be British Acts which have been extended or applied to Zambia by virtue of the English Law (Extent of Application) Act ⁷⁸ and the British Acts Extension Act. ⁷⁹ Under the former Act, it is provided that:

78. Chapter 4 of the Laws of Zambia.

79. Chapter 5 of the Laws of Zambia cf. note 13 above.

"Subject to the provisions of the Zambia Independence order, 1964 and to any other written law -

(a) the common law, and

(b) the doctrines of equity; and

(c) the statutes which were in force in England on the 17th August, 1911 (Being the commencement of the Northern Rhodesia order-in-council, 1911); and

(d) any statutes of latter date than that mentioned in paragraph (c) in force in England, now applied to the Republic or which hereafter shall be applied there to by any Act or otherwise - shall be in force in the Republic".

The problems of identifying which statutes or principles of common law and equity applied have already been alluded to. However, with regard to the common law, it can only be said that it applies largely to the banker and customer relations and negotiable instruments.

The British Acts Extension Act, on the other hand provides for the inclusion of Zambian terms in the place of British terms in specified British Acts which it extends to Zambia. These statutes are:

(1) The Conveyancing Act, 1911,

(2) The Forgery Act, 1913,

- (3) The Industrial and Provident Societies (Amendment) Act, 1913,
- (4) The Larceny Act, 1916,
- (5) The Prevention of Corrupt Practices Act, 1916 ⁸⁰,
- (6) The Bills of Exchange (Time of Noting) Act, 1917,
- (7) The Married Women (Maintenance) Act, 1920,
- (8) The Gaming Act, 1922,
- (9) The Industrial and Provident Societies (Amendment) Act, 1928,
- (10) The Inheritance (Family Provision) Act, 1938,
- (11) The Limitations Act, 1939; and
- (12) The Law Reform (Enforcement of Contracts) Act, 1954.

The other enactments which bankers may invoke or be required to observe include The Companies Act. ⁸¹ This Act governs banks in their capacity as companies. It stipulates requirements relating to incorporation, management,

80. Superseded by the Corrupt Practices Act No.14 of 1980.

81. CAP 686, with particular relevance to banking activities are section 89 - 105. See also In the Matter of the Companies Ordinance CAP 216 of The Laws of Zambia V. Airflex Limited, Selected Judgments of Zambia No. 4 of 1971 (1970 HK 1334) a case involving the requirement to registrar documents creating interest or credit such as deeds or changes. The Judgment explains registration procedures and conditions involving secured and unsecured creditors.

capitalisation, operations and winding up of companies. It also provides for the registration of mortgages, charges and enforcement of securities as well as the rights of debenture holders, creditors and holders of floating charges. All these matters apply to the business of banking. But as will be seen, in chapter six, in the light of the Companies Act, many of the provisions in other statutes such as the Banking Act, the Bank of Zambia Act, the Agricultural Credits Act and The Trade Charges Act (The last two will be discussed below) are really a mere duplication of functions.

The Registration of Business Names Act ⁸² is another statute which banks may not ignore. It controls the choice and use of business names. In view of its existence, the inclusion of provisions affecting business names in the Banking Act, can also be treated as a duplication. Where personal properties such as life policies or accounts in the case of banks, are submitted as a form of lien or security for credit, the provisions of the Disposal of Uncollected Goods Act ⁸³ may be invoked. The relevant provisions in the Act, are those requiring a Creditor who has not received satisfaction to refrain from exercising his right of lien for at least six months. If the debtor persists in defaulting the creditor is

82. CAP. 687.

83. CAP 703 of the Laws of Zambia.

thereafter at liberty to exercise his rights under the lien in accordance with the procedures laid down in the Act. Similarly, the Debtors' Act ⁸⁴ is relevant to banks. The most significant provision is section 10 which provides that:

"Where the plaintiff in any action before the high court or any subordinate court proves at any time before the final judgment by evidence on oath to the satisfaction of the court that he has good cause of action against the defendant to the amount of twenty kwacha or upwards, and that there is a probable cause for believing that the defendant is about to quit Zambia unless he be apprehended, and that

(a) the absence of the defendant from Zambia will materially prejudice the plaintiff in the prosecution of his action or in his obtaining satisfaction therein; or

(b) the defendant has disposed of or removed out of Zambia his property or any part thereof and the execution of any judgment or order will be thereby obstructed or delayed:

such court may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he has sooner given the prescribed security not exceeding the amount claimed in the action, that he will not leave Zambia without leave of the court".

In view of the Mulungushi economic reforms which reduced the eligibility of foreigners to acquire loans in Zambia, the significance of this provision is somewhat diminished. Its usefulness in respect of fraudulent Zambians is however, undiminished, although the choice of going to court may, in some cases, be more costly than even the amount claimed.

Another Act which banks cannot avoid especially in dealing with securities is the Stamp Act. ⁸⁵ This Act deals

84. CAP 664.

85. CAP 87 of the Laws of Zambia. See Loto Petroleum Distributors V. Francesco Arduin. Supreme Court of Zambia, Appeal No. HP/839 of 1973.

with the payment of registration duty on instruments offered as security or mortgage.⁸⁶ Similarly, the Bankruptcy Act⁸⁷ may from time to time be invoked in relation to the activities of banks. The Act covers the procedures and requirements to be observed in the event of insolvency. It defines the rights of bankers and other creditors, secured or not and their successors in title in respect of a bankrupt debtor. It also outlines the banker's rights and obligations with respect to payment by himself of a bankrupt's cheque before and after notice of the bankruptcy.

The Cheques Act⁸⁸ also applies to banking. It deals generally with the ordinary relations of a banker and his customers, but with special reference to the negligent payment of cheques. The Act amends the common law rules governing such payments. Originally a banker who negligently paid out an unendorsed or irregularly endorsed cheque was liable for conversion.⁸⁹ Under this Act, which is based on the English Cheques Act, 1957 no liability accrues to the banker who pays

86. See e.g. Bank of Zambia V. Registrar of Lands and Deeds and The Stamp Duty Act CAP 664 of the Laws of Zambia [1979] ZR 22. See also The Stamp Duty Commissioners V. The African Farming Equipment Company Limited, Selected Judgments of Zambia No.15 of 1969 (Civil Appeal No.5 of 1968).

87. CAP 190.

88. CAP 589.

89. See Fine Art Society V Union Bank of London, (1886) 17 G.B.D. 705, Gordon V London City and Midland Bank [1902] IK.B. 242 at 265. See also W.V.H. Rogers, Winfield and Jolowicz on Tort (London: Sweet and Maxwell, 1979) P.450.

out such a cheque in good faith and in the ordinary course of business. The Act also excludes from application certain provisions of British Acts otherwise applicable in the country. These are section 17 of the Revenue Act, 1883, all provisions of the Bills of Exchange (Crossed Cheques) Act, 1906 and all provisions of the Bills of Exchange Act (1882) (amendment), Act, 1932.⁹⁰ Finally, the provisions of the Evidence (Banker's Books) Act⁹¹ affects banks. That Act provides that in any legal proceedings a copy of any entry in banker's books shall be received as prima facie evidence of such entry, and of the matters, transactions, and accounts therein recorded.

The only other statutes that can be said to be remotely relevant to the business of banking are those statutes applying to all citizens and nationals of the country, such as the penal code.⁹²

3:6 Regulation of Securities and Lending

There are in addition to the foregoing legislative enactments a few others that apply specifically to the lending aspect, and in particular to the creation of securities; their registration or otherwise administration and exchange. The significance of securities to a bank has already been illustrated in Chapter One and cannot be doubted. Not all

90. CAP 174.

91. CAP 171.

92. See e.g. Anort Sondoyi V The People [1977] ZR 148 and Attorney General V. Bank of Zambia [1971] ZR also cited in Zambanker, a Journal of the Bank of Zambia, Vol.4, Dec; P.12, This case was about negligent payment of a cheque belonging to the Ministry of Health to a fictitious person.

lending however, is secured. An advance may be granted to a reliable customer for an approved purpose for which the customer has adequate experience and skill without security. Similarly if a project is sound a bank may lend to it without security. As Ruth Weiss asserts:

"Contrary to popular belief it is the project and its viability which is of first importance. A man who brings along, say, insurance policies, a house unburdened by mortgage, a guarantee and an impossible scheme will have less chance of raising an overdraft than the man without security but a new and obviously splendid idea which will work. After all, the bank's future profits are tied up with their customers fortunes. To simply liquidate a man's securities and take back a loan is bad business in the short and long term".⁹³

On the whole however, the provision of security is an integral aspect of modern lending. There are many kinds of security that may be submitted to support a customer's application for a loan or advance. Some borrowers tender stocks, shares, title deeds, life insurance policies, bills of exchange and promissory notes. Others offer guarantees made by responsible and respectable parties. Customers who are less fortunate may have nothing better to offer than second or even third mortgages, shares partly paid up, undeveloped building lands, bills of sale, mortgages on mines, brickfields and other wasting properties and reversions. Bankers usually look askance at these latter kinds of securities since they lack one or other of the requisites necessary to make them attractive as

93. Ruth Weiss, "Nationalisation" says UNIP: What Next for the Banks?, Enterprise Magazine, December, 193 P.33.

cover for an advance ⁹⁴. Whatever class of security a banker agrees to accept there are usually three ways in which he may avail himself of it. These are as a lien, a pledge or a mortgage. It is not proposed to define or describe these forms of security here as doing so would not add to the subject under discussion. It is nevertheless important to note that other kinds of terminology may be used to describe and denote them; such as charge, debenture, covenant or hypothecation, etc. It is also important to note that the use of any kind or form of description depends upon whether the security offered is a personal and trading property or agricultural stocks and land. In Zambia in addition to the Companies Act, and the Bank of Zambia Act, other statutes which regulate securities are:

3:6:1 The Agricultural Credits Act⁹⁵

This Act facilitates the borrowing of money by farmers using the security of charges created upon farming stocks and other agricultural assets. It also provides for the appointment of a Registrar of Agricultural charges and for the registration of all such charges. Agricultural charges under the Act are instruments in writing created by a farmer in favour of any person in respect of that person's money advanced to the farmer concerned. These charges may consist of all or any of the

94. H.P. Sheldon and C.B. Drover, The Practice and Law of Banking, (London: MacDonald and Evans, 1962) P.336.

95. CAP 349.

farming stocks or other agricultural assets belonging to a farmer seeking credit. Farming stocks are defined as and include crops, horticultural products (whether growing or severed from the land and whether processed, manufactured, treated or not), and livestock such as poultry or bees. They also include the produce and progeny of such livestock. Similarly, seeds, manures, fertilizers, insecticides, oils, fuels, agricultural fixtures which a tenant is by law authorised to remove also fall under this definition. They can therefore be charged as security for advances or loans of money.

The Act divides agricultural charges into fixed and floating charges. A fixed charge may be created on farming stock and other agricultural assets including:

(a) in the case of livestock, any progeny thereof which may be born after the date of the charge; and

(b) in the case of agricultural plant, any plant which may, whilst the charge is in force, be substituted for the plant specified in the charge. ⁹⁶

The parties to a fixed charge are free to agree on any terms they wish to observe. In addition the Act provides

96. S.3(3).

that the holder of a fixed charge may, on the happening of any specified event:

(a) seize the property subject to the charge and take possession of it.

(b) Sell such a property after an interval of five clear days or such less time as may have been agreed by the parties.

In the absence of an agreement to sale by private treaty, the charge holder must dispose of the property by public auction. After the sale, the charge holder is required to apply the proceeds towards the discharge of the loan, including the costs incurred during seizure and disposal of the property in question. The surplus moneys must be returned to the farmer.

On the part of the farmer, subject to an agreement to the contrary, he is entitled to sell the property which is the object of the charge. He is however, required to pay to the holder of the charge such moneys as are required to discharge the loan. ⁹⁷ Although the farmer is under no obligation to insure his property, the parties can agree that where the property is insured any monies received under the policy of insurance may be applied to discharge the loan. ⁹⁸

97. S.4 (2) (a)

98. S.4 (2) (a)

Where the insurer pays money under the policy directly to the holder of the charge such payment is a valid discharge of the loan.

The holder of a fixed charge enjoys priority over all the other creditors. According to Section 4(3) however:

"Where any proceeds of sale which, in pursuance of the obligations imposed by subsection (2), ought to be paid to the holder are paid to some other person, nothing in this Act shall confer on the holder a right to recover such proceeds from that other person unless the holder proves that such other person knew that such proceeds were paid to him in breach of such obligation, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge".⁹⁹

With regard to the floating charge this is similar to a company debenture.¹⁰⁰ A floating charge however may only be created in favour of a bank otherwise it is null and void. Such a charge may be placed on farming stocks and other agricultural assets but should not include tobacco; maize, potatoes, milk or vegetables, which are perishable products.¹⁰¹

In general a farmer who has granted a floating charge is under the same obligations as the one who has executed a fixed charge. This means that he is obliged to pay over to the holder of the charge such proceeds of any sale of the agricultural

99. S.4 (3)

100. i.e. a document which creates or acknowledges a debt.

101. S.3(4)

asset or compensation under a policy of insurance as are necessary to discharge the loan. Most significantly however, the floating charge may have the effect of a fixed charge under certain circumstances such as during the bankruptcy of the farmer or his death, the dissolution of the partnership in the case where the property charged is partnership property, and in cases where the parties have agreed that upon the happening of certain events, the holder may serve notice, the actual service of such notice. 102

The farmer is only exempt from his obligations under a floating charge if he has applied the monies realised out of a sale or policy of insurance to purchase farming stocks. In such a situation, the newly acquired stocks immediately become subject to the charge. 103 Where a charge is executed over certain farming stocks, the farmer is obliged to give a written notice of this fact including the ranking of such charges in terms of priority, to all purchasers of those stocks. The stocks on which this is required are cattle, tobacco, milk, maize, agricultural vehicles, machinery or other plant. Receipt of the notice obliges the purchaser or the person effecting the sale on behalf of the farmer as the case may be to pay the proceeds of the sale to the holder of the charge to the amount specified in the notice. Such payment to the holder amounts to a complete discharge of the loan.

102. S.5.

103. S.5.

3:6:2 The Trade Charges Act

Apart from farmers, many other groups of people and sectors require credit to establish or expand their existing businesses. These include traders or merchants engaged in commercial businesses. A well known method by which a trader can acquire credit is by offering his merchandise or other item related to his business or planned business as security. This security is normally referred to as a trade charge. In essence a trade charge is a trader's bill of sale.

In Zambia, the creation and administration of trade charges by law only received new impetus in 1973 when the Trade Charges Act, ¹⁰⁴ was enacted. This Act was enacted purely to ameliorate the harshness of the Bills of Sale Acts which were in force before its passage. A prelude to the Act was the economic reforms of 1968. Following those reforms, it was anticipated that Zambians would take over the businesses left by aliens or open up new ones on their own. As it turned out, this was easier said than done. Many Zambians were simply unable to provide acceptable forms of security for the purposes of obtaining loans with which to purchase the businesses of outgoing expatriates or start new ones. The enactment of this legislation was in another sense, therefore meant to alleviate that situation.

104. No.49 of 1973

The object of the Act is thus to enable traders to obtain loans or advances from banks and other financial institutions by using their personal property or stocks-in-trade as security for such loans. ¹⁰⁵ Accordingly, Section 3 provides that:

"A trader can seek credit from a financial institution on the production of adequate proof of ownership of such personal property and stock-in-trade as is being tendered as security. Upon such proof a financial institution or parastatal corporation may take a charge of the stock-in-trade and personal property which the trader owns or of which he may subsequently become the owner, whether or not such property is in existence at the time of such delivery".

A charge created in this manner can either be a fixed or floating charge. The Act also enhances the debtor's security by offering a further chance for him to assess the value or worth of the securities, including their freedom from overriding encumbrances. The Act however, omitted most of the requirements of the Bills of Sale Act, such as the use of compulsory statutory forms and provisions of inventories by the debtor. These were viewed as cumbersome requirements in the light of the simplicity of some of the credit seekers. Therefore, in order to meet the main objective of creating conditions for increased credit facilities it was felt that the Act should avoid onerous and expensive requirements for which expert assistance would have to be hired.

105. Simbi V. Mubako, "The Trade Charges Act", Zambia Law Journal [1973] P.163.

The Act also contains sanctions against default by borrowers. One of these relates to the appointment of a Registrar of Trade Charges, whose responsibilities include the registration of all trade charges, specifying the various items upon which they are based. ¹⁰⁶ The register is open for public inspection, thus offering advance notice to lenders against deception. ¹⁰⁷ In other words, it is assumed that all lenders will inspect the register to ensure that the stocks-in-trade involved in their particular transactions have not been offered to a previous lender before they part with their money.

Under section 5(2) (a) creditor institutions are authorised to seize the goods covered under a charge after five clear days of default in payment by the trader. In the case of perishable goods however, creditors can assume possession immediately and disposal by sale may follow as soon as the following circumstances occur:

- (i) if the debtor becomes insolvent;
- (ii) when a receiving order in bankruptcy against the debtor is obtained;
- (iii) where there is a dissolution of a partnership (i.e. where the debtor is a partnership or member of a partnership);
- (iv) the death of the trader or person giving the security;
- (v) on default of any payment due on the money lent; and

¹⁰⁶. Section 4(2).

(vi) on the happening of any event as may be provided in the charge.

Before taking possession or disposing of the charged items creditors are required to give adequate notice of their intentions.

One of the most remarkable provisions of the Trade Charges Act is Section 5(3) which exempts the credit transactions created under the terms of the Act from the requirements of Section 41 of the Bankruptcy Act. Without such exemption the secured property would constitute a part of the property of the bankrupt and may be dealt with to the detriment of the secured creditor if he has no preferred status.¹⁰⁸ It is not clear why the Trade Charges Act does not expressly state that the provisions of the Preferential Claims in Bankruptcy Act,¹⁰⁹ are not similarly exempted from applying to trade charges. Under this latter Act, the wages or salaries of employees and taxes payable to the government are accorded a higher priority than any other claims on the estate of the bankrupt. The implication of this provision is that trade charges under the Trade Charges Act occupy a secondary position vis-a-vis those creditors mentioned in the Preferential Claims in Bankruptcy Act. It also implies that even if they have

108. See e.g. Mphanza P. Mvunga, "Zambia", in Neville Rubin, and Eugene Cotran (editors), Annual Survey of African Law, Volume VII - 1973 (Rex Collins, London 1977), 185 at P.199

109. CAP 191.

concluded a private preferential claims covenant with a trader, holders of trade charges may still lag behind employees and the government in recovering their dues from the estate of the bankrupt. Clearly such a situation makes trade charges less attractive as incentives to increase credit in the country.

Perhaps exemption from the Preferential Claims in Bankruptcy Act should be implied as it is impossible to see how the government could have intended that its policy of promoting trade charges as an inducement to lenders should be defeated by another piece of legislation, particularly one related to the one under exemption. Without such implication, the government's position becomes absurd as it was alert enough to ensure that funeral costs and other administrative costs are discharged first before employees' and government claims take effect.

The idea that the government intended to make trade charges an attractive form of security and perhaps one with priority over other claims is confirmed immediately after Section 5(3) by Section 5(4). This latter section provides that any trade charge created in accordance with the terms of the Act will enjoy priority over all other rights subsequently acquired in, on or over the property under charge. Sadly, this priority does not supersede the rights acquired in a property that happens to be stock-in-trade by a subsequent purchaser for

value in good faith. ¹¹⁰ Why only stocks-in-trade are excluded from priority is not clear. It can only be speculated that it is aimed at avoiding conflict with an established legal precedence which gives a blanket cover to transactions concluded under market overt. ¹¹¹ As will be seen in chapter six the requirement for registration of trade charges becomes superfluous in view of these situations.

The priority accorded to a holder of a trade charge may also be removed where such a party consents in writing to accord priority to another person who obtains rights in the property concerned afterwards. ¹¹² In terms of remedies, the debtor is required to refrain from interfering with the right of possession of the creditor through fraud. The penalty for the offence on conviction is a fine or imprisonment or both. The trader is equally under obligation not to make false declarations which would otherwise materially affect the charge, and in particular, he should not fail to disclose to the person from whom credit is obtained the fact that the property being offered as security has already been committed to another creditor. The penalty for disobedience is a fine or a prison term of two years with hard labour or both. ¹¹⁴

¹¹⁰. Section 5(4) (a)

¹¹¹. See e.g. Bishopsgate Motor Finance Corporation Ltd V. Transport Brakes Ltd [1949] I.K.B. 322.

¹¹². Section 5(4) (b)

¹¹³. Section 6

¹¹⁴. Section 7

3:6:3 Land as Security

It has already been stated that one of the forms of security which can be used to obtain credit is land. Land is made available as security by way of mortgage. A mortgage is a conveyance of an interest in property supplying security for the repayment of a debt. ¹¹⁵ A mortgage transaction presents two essential features. The first is that the mortgagor or debtor undertakes to transfer proprietary rights in his land to the mortgagee. The mortgagee is accordingly provided with some security to ensure the performance by the mortgagor of his obligation to repay the loan. The mortgagee also has a personal action against the mortgagor in default, in addition to a number of other rights over the security which he enjoys.

With regard to the use of land as security in Zambia, the most relevant statutes are the Land (Conversion of Titles) Act, ¹¹⁶ and the Lands and Deeds Registry Act. ¹¹⁷

3:6:3 (a) The Land (Conversion of Titles) Act, 1975

This Act provides that all land in Zambia is vested in the President who holds it in perpetuity for and on behalf of the people of Zambia. ¹¹⁸ Section 5 abolishes all freehold and

115. See Stanley V. Wilde (1899) 2 Ch. 474 Per Lindley M.R.

116. CAP 289.

117. CAP 287.

118. Section 4.

fee simple land in the country. The only legal way of land holding in the country is by statutory lease lasting 100 years.

Bare land cannot be sold in Zambia. It follows that such land cannot be valued for the purposes of obtaining a loan. According to Section 10, "Any mortgage, charge, or trust subsisting over land immediately before the commencement [sic] of this Act shall, on such commencement, operate only on and against the unexhausted improvements on the land and, so far as regards land apart from the unexhausted improvements, shall be deemed to be extinguished".

The President through the commissioner of lands is authorised to exercise control over all transactions concerning land. This means that the President is empowered to determine the pace of credits which concern the security of the land. He is also empowered to impose any terms and conditions which he may think fit. Thus he may inter alia fix the maximum amount of loan money that may correspond to any given land. Similarly the president may fix the maximum amount of money as price for any piece of land. According to Section 13(1):

"notwithstanding anything contained in any other law or deed, instrument or document, but subject to other provisions of this Act, no person shall subdivide, sell, transfer, assign, sublet, mortgage, charge or in any manner whatsoever encumber, or part with the possession of his land or any part thereof or interest therein without prior consent in writing of the president.

Unexhausted improvements are defined in the Act as:

"anything resulting from the expenditure of capital or labour and excludes carrying out of any building, engineering or other operations in, on, over or under

land, or the making of any material change in the use of any building or land". 119

The provision that mere ground apart from unexhausted improvements cannot be sold naturally diminishes the value of the mortgage as an instrument of obtaining credit. This is true especially in the rural areas where the only improvements such as Kraals, huts and wells may be worthless and incapable of attracting the interest and attention of financial institutions. The best possible explanation for the Act's provisions in this regard may be that it was not enacted with the objective of creating conditions for improved and increased outflow of credit. The main aim of the Act was rather, to enable the government to repossess the land of absentee land lords and curb the rampant speculation in urban land which was going on. The immediate spark was made by the sale of a vacant plot of land opposite the city library in Lusaka. By a conveyance dated 3rd April 1975, one George Louis Lipschild of Lusaka sold to Solar Investment Limited the following properties:

- (a) Subdivision 1 of subdivision A of subdivision No.29 size 0.100 of an acre.
- (b) the remaining extent of subdivision A of subdivision No.29, size 0.177 of an acre; and
- (c) the remaining extent of plot No.29, size 0.229 of an acre.

119. Section 3.

These three plots each less than a quarter of an acre cost Solar Investments K150,000. On the same day, 3rd April, by another conveyance made between Solar Investment (Z) Ltd, and the Development Bank of Zambia, the third plot, that is the remaining extent of plot No.29, size 0.229 of an acre was sold for the sum of K100,000 to the said Bank.

The President reacted very angrily to this sale. He termed it not only profiteering but also insanity which he vowed to stop. He directed Solar Investments to pay back the money to the bank. He also announced that the plot in question was immediately taken over by the state. Further changes to the law immediately followed. These were as follows:

(a) All freehold titles to land were abolished and existing interests abridged to statutory leaseholds of hundred years duration.

(b) All unutilised tracts of farmland were immediately taken over by the state.

(c) No individuals or groups of individuals were to be free to occupy any piece of land without the authority of the state or its legal agency.

(d) The sale of land in urban areas was abolished save for developments on the land. These could be sold if prior consent of the President was obtained.

(e) All vacant and undeveloped land in and around urban centres was municipalised; and

(f) Real estate agencies were closed down immediately as they were largely responsible for the inflated prices on land and housing. Their functions were taken over by The Zambia National Building Society. The Land (Conversion of Titles) Act merely gave legislative backing to these measures.¹²⁰

It can only be observed that in view of the degree of sensitivity shown in that particular case, there can be legitimate concern on the part of lenders and even land holders (i.e. borrowers) about the objectivity of certain price determinations. Naturally such fears may get in the way of desired benefits such as increased credit.

In respect of lending to rural areas this is largely inhibited by the absence of title to land and other customary traditions. The only way in which mortgages can be taken advantage of in those areas is through Section 3 which provides that the price of labour or any other expenditure on the land may be used to execute a mortgage.

3:6:3 (b) The Lands and Deeds Registry Act

Another requirement which banks may require to deal with in their operations is the registration of the lands and deeds

¹²⁰. Cited in Melvin Leslie Mbao, Legal Pluralism and Its Implications for Land Ownership and the Control of Land Use in Zambia (M. Phil. Dissertation, Cambridge University, 1982) P.46

offered to them as security for the loans and advances they made. Registration enables title to land or any other interest in it to be ascertained as a fact instead of leaving such ascertainment to investigation. ¹²¹ This Act provides machinery for the registration of titles and deeds affecting land in Zambia. It applies in principle to all land in the country, but in practice it is restricted in application by inadequate surveying facilities. Section 4 of the Act provides that any document purporting to grant or transfer land or an interest therein for a period longer than one year must be registered. The effect of non-registration is to make the document void, though not without effect whatsoever. If one of the parties has benefited by reason of a void transaction, the courts may still require him to provide satisfaction or grant equitable remedy to the suffering party. ¹²² Similarly, a fraudulent attempt to avoid registration may also be remedied by the courts and registration out of time may be permitted.

Section 29 of the Act, makes it compulsory to register a certificate of title. Registration applies also to any document purporting to grant, convey or transfer land or an interest in land for a term of not less than 14 years. Only an original lease or subsequent transferee of a state lease may obtain a

¹²¹. S.R. Simpson, Land Law and Registration (Cambridge: Cambridge University Press, 1976).

¹²². See e.g. Walsh V. Lonsdale (1882) 2 Ch.D.9. and Sundi V. Ravalia 5 N.R.L.R. at P.351.

provisional certificate of title by application to the Registrar.¹²³ The production of a registered certificate under the hand and seal of the Registrar is an absolute bar and estoppel to any action against the registered proprietor, unless such action is exempted.¹²⁴

The importance of registration in all cases is to ensure that the borrower or seller has evidence of this title. In the case of borrowers especially, it also ensures that they do not use the same property again as security to obtain credit from another person unless there are unexhausted rights or reversions in the property. The Housing (Statutory and Improvement Areas) Act ¹²⁵ which caters for the creation of improvement areas and statutory housing areas within municipalities or local councils also provides machinery for registration of interests held in land in such areas. The holders of title in these areas can mortgage their properties with financial institutions. In chapter six it will be seen how some of the requirements relating to registration are in fact obstructing the desired improvement in the provision of credit by banks and other financial institutions through the imposition of --lengthy and technical procedures and by declaring that bare land has no value.

123. See Section 30. See also Section 5 of the Land (Conversion of Titles) Act, 1975.

124. Section 34(2).

125. No.30 of 1974.

Finally, in the next chapter, it will be seen how the economic conditions in the country have, since the colonial days required a boost through increased bank lending. The chapter will expose some of the avenues and opportunities to which such bank lending would have been directed and thereby they could have made an improvement in the economic well being of the country as a whole.

3:7 Conclusion

The Northern-Rhodesia Order-in-Council provided that statutes of general application, the common law and doctrines of equity applied to the territory of Northern Rhodesia. All these are controversial items and it is not all too clear which of their particular aspects applied to banks and how. It was not until the Bank of Rhodesia and Nyasaland Act which appeared after amalgamation of the territories of Rhodesia and Nyasaland that the situation relating to regulation of banks became clear. That statute created a central bank and empowered it to regulate the business of banking in all the three territories.

The Banking Act of 1959 took away the licensing powers of the central bank and placed them in the hands of a Registrar of banks. Both Acts stipulated a variety of requirements and conditions for operating banking in the country. After dissolution and particularly following the attainment of independence, new legislation was enacted. Most of it however, contained the same provisions as the out going statutes. The

only changes consisted of Zambian terms and denominations. It was not until 1971, following the Mulungushi reforms of 1968 and the failed take over of the financial sector in 1970 that a far reaching Act, the Banking Act, 1971 was enacted. That Act made a number of changes to the requirements of registration and licensing, capitalization, nationality and management. Save for a minor amendment in 1971 the Bank of Zambia Act, on the other hand, remained virtually the same. Change came in 1985 when it underwent a comprehensive revision to cater for the worsening economic situation, particularly the deterioration in the balance of payments situation and the drying up of credit opportunities. In respect of the latter, the Act devised a novel scheme - The Credit Guarantee Scheme to assure banks and other creditors that their loans to small enterprises will be repaid.

Other changes relate to the prudential supervision of banks for which the 1985 Act deregulated interest rates, while leaving reserve requirements, minimum liquidity ratios, exchange control, "pipe line" management and other risk aversion processes to discretionary control by the central bank. Alongside these enactments come those dealing with absconding debtors, evidentiary functions of banker's books, uncollected goods, banks as companies per se, business names, bankruptcy, cheques and duty on business instruments.

With regard to securities, these fall into three categories, viz agricultural, trade or personal and land. The

agricultural securities fall under Agricultural Charges Act, while the Trade Charges Act deals with Stocks-in-Trade and other personal securities. When land-is offered as security, the terms of the Land (Conversion of Titles) Act, and the Lands and Deeds Registry Act must be satisfied.

CHAPTER FOUR

ECONOMIC CONDITIONS IN PRE AND POST INDEPENDENCE ZAMBIA

AND OPPORTUNITIES FOR HIGHER BANK LENDING

4:0 INTRODUCTION

As stated at the end of the last chapter, this chapter looks at some trends in the economy of Zambia from the colonial period to the present. It seeks to highlight some of the principal features of the ruling economic policies and activities as well as the leading players and beneficiaries in the economic life of the country. In particular, the chapter will attempt to expose the availability of opportunities for fruitful bank lending and some of the attitudes towards the economic well being of the country and its people.

4:1 Before Independence

The initial government of Zambia (or Northern Rhodesia as it then was) was formed by the British South Africa Company (herein-after referred to as the B.S.A. Co.) under charter from the British government. The territory's economy before the opening up of the copperbelt at the end of the 1920s was almost entirely one of rural subsistence farming in which 95 per cent of the population were engaged. The European inhabitants, numbering about 3,500 in 1921, were evenly engaged as to one half in administration and trade, while the other half comprised farmers, predominantly growing tobacco for export and

maize, part of which was consumed locally. Soon after 1900, mining of lead and zinc also afforded some minimal exports which roughly equalled those of farming.¹

After assuming control of the territory it became apparent to the B.S.A. Co. that, contrary to its calculations, it was unable to provide either the financial resources or the skilled manpower to exploit the territory's resources and make it profitable. According to company reports, administrative costs alone were crippling and constituted the biggest financial liability for the company.² The deficit of £96,500 for the year ended March 31, 1921 was cited as an example of the company's mounting problems. The B.S.A. Co. attributed the situation to the territory's inability to attract a much larger influx of European farmers who would have been a source of substantial tax revenue. In view of these problems and despite earlier reservations, the company was compelled to seek outside capital investment and technical expertise to carry out the prospecting and subsequent mining operations in the territory. This change of attitude in favour of allowing others to work in the territory is said to have been inspired by more than anyone else, one director - Edmund Davis. It was later termed as a

1. Anthony Martin, Minding Their Own Business; Zambia's Struggle Against Western Control (London: Hutchinson, 1972) P.28

2. See A. Young, Industrial Diversification in Zambia (New York: Praeger Publishers, 1973) P.30.

"forward step" by Sir Theodore Gregory when he gave the following account of how it was accomplished:

"Early in 1923, Edmund Davis suggested to members of the board of the B.S.A. Company that they should place the development or at any rate the prospecting of Northern Rhodesia in the hands of syndicates with ample capital, properly managed and, with the necessary technical staff at their disposal".³

Following the adoption of this policy Rhodesian Selection Trust (RST) and Anglo-American Corporation (AAC) were invited to Northern Rhodesia and mining operations commenced towards the end of the 1920s. The B.S.A. Co. which claimed ownership of all the mineral rights in the territory took 50 per cent interest in both companies as a price for allowing the minerals to be worked, a policy which it resisted changing until much later when the need for further prospecting became more pressing. A significant transformation of the territory's economy soon began to show following the opening up of four mines, namely, Roan Antelope, Mufulira, Rhokana and Nchanga. This new change placed the copper mining industry into the dominant position that it still enjoys in the economy of Zambia even today. Tables 4 and 5 overleaf offer an illustration of this position.

3. Sir Theodore Gregory, Ernest Oppenheimer and The Economic Development of Southern Africa, (London: Ayer Co. Publishers, 1962) P.392.

TABLE 4.

THE CONTRIBUTION (PER INDUSTRY) TO THE GROSS DOMESTIC PRODUCT
OF NORTHERN RHODESIA, 1954-1961 (PERCENTAGE DISTRIBUTION.)

Industry	1954	1955	1956	1957	1958	1959	1960	1961
European Agriculture	2.0	1.6	1.8	2.7	2.1	2.4	2.1	2.8
African Agriculture	11.0	8.8	8.4	10.6	11.2	9.5	9.3	9.8
Mining and Quarrying	52.4	56.8	54.0	39.0	32.6	45.4	47.5	44.1
Manufacturing	4.0	3.9	4.4	6.4	7.1	5.6	5.5	5.9
Building and Construction	6.1	6.2	6.7	8.6	9.7	5.8	4.5	4.1
Electricity and Water	.4	.4	1.6	1.9	2.5	2.0	2.3	2.2
Trasportation and Communications	3.4	3.4	3.7	5.2	5.3	5.0	5.1	5.1
Distribution	5.7	5.1	5.1	6.5	6.4	5.2	5.4	5.6
African Household Services	6.6	5.4	4.9	6.4	7.9	7.0	6.2	6.9
All Others	8.4	8.4	9.4	12.7	15.2	12.1	12.1	13.5
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Robert E. Baldwin, Economic Development and Export Growths, A study of Northern Rhodesia, 1920-1960 (Berkeley and Los Angeles: University of California Press, 1966) P.35. See also National Accounts of the Federation of Rhodesia and Nyasaland, 1954-1961, Federation of Rhodesia and Nyasaland, Central Statistical Office (Salisbury: Government Printer, 1962) P.27.

TABLE 5.

GROSS DOMESTIC PRODUCT BY SECTOR

(AT CURRENT PRICES K' MILLION): AFTER INDEPENDENCE.

Sector	1977	1978	1979	1980	1981	1982	1983	1984
Agriculture, Forestry, Fishing and Hunting	325.6	363.0	397.2	435.3	553.8	492.2	593.7	697.8
Mining and Quarrying	233.7	286.8	469.3	50.17	488.4	396.6	641.6	664.0
Manufacturing	350.0	430.1	486.7	566.1	684.1	740.4	829.8	988.2
Electricity, Gas and Water	47.6	57.6	59.9	61.0	66.3	72.2	70.4	71.0
Construction	113.7	111.5	101.2	136.5	111.7	127.0	133.1	135.4
Wholesale and Retail Trade Hotels, Bars and Restaurants	223.7	260.0	287.9	361.2	410.9	452.9	524.9	592.8
Transport, Communication and Storage	131.4	125.5	148.6	161.5	171.1	193.2	227.4	248.6
Financial Institutions, Insurance, Real Estate and Business Services	201.8	222.3	238.4	325.0	363.3	363.3	403.6	443.3
Community Social and Personal Service	329.4 49.0	362.2 55.1	401.9 78.3	468.0 112.5	586.0 121.0	665.2 131.1	708.9 92.7	799.8 141.8

Source: Monthly Digest of Statistics Vol.XXI, No.4 to 5 April/May, 1985 (Lusaka: Central Statistical Office).

Although there have been remarkable changes in the sectoral structure with manufacturing gaining some significance, these have not been able to replace the dominant role of the copper industry. Indeed, virtually all the gains in the non-mining sectors were themselves related in one way or another to the mining industry and did not supersede it. Thus, whereas between 1945 and 1953, exports of copper accounted for an average of 86.5 per cent of the total exports with the remaining 13.5 also derived from the mining industry, this dependency reached 92 per cent in 1964, rising to 95.7 per cent in 1967.⁴ In 1983 the mining industry accounted for 15.4 per cent of the GDP while still generating over 90 per cent of the country's foreign exchange earnings. This situation has not significantly changed even today.⁵

As the demand for copper on the world markets increased, owing chiefly to the expanding electrical and automotive industrial growth in the industrialised countries, production at the territory's mines also quickly expanded. From a negligible quantity in 1930 it rose to 138,000 long tons in 1934. But due to a depression on the world markets thereafter,

4. A.G. Irvine; The Balance of Payments of Rhodesia and Nyasaland 1945-54 (London: Oxford University Press, 1959) See also The Annual Report, Ministry of Development and Finance, 1970; PP.52-53.

5. Zambia, An Economic Report Published by National Westminster Bank, October 1984. See also IMF, International Financial Statistics, Vol. XXXIX, No.1 January 1986 PP.514-517.

there were no significant improvements in this figure until 1937 when sharp increases followed, though they were curtailed from time to time by such events as war and technical difficulties.⁶

This remarkable growth in output naturally created considerable wealth. The distribution of that wealth however was not equitable and was based on racial lines. The chief beneficiaries of the wealth in terms of jobs or higher positions, salaries and social amenities were European workers and settlers. Africans by contrast continued to be manual workers and no effort was made to help them attain skills. Their social amenities were poor and over crowded. Equally notable was the absence of any effort on the part of the government or the mining companies to use the territory's wealth to induce development into other sectors as will be seen below.

4:1:1 Attitude of The Mining Companies Towards Economic Diversification

Despite realising huge returns on their investments in the territory, the mining companies were unwilling to stimulate further investment by diversifying into other areas of economic life. Thus instead of ploughing back their profits into the

6. See M.L.O. Faber and J.G. Potter, Towards Economic Independence; Papers on The Nationalization of the Copper Industry in Zambia: University of Cambridge, Dept., of Applied Economics, Occasional Papers No.23 (Cambridge: Cambridge University Press, 1971) P.1.

country these companies preferred to externalise them abroad where they distributed them out as generous dividends. They attributed their actions to the narrowness of the market in Northern Rhodesia, citing low population and per capita income of the indigenous people as its causes. ⁷ Lord Robins' ⁸ statement succinctly characterised the attitude of these companies:

"we shall continue to seek profitable outlets, but have resisted, and will continue to resist suggestions that it would benefit the country or its people to invest in failures and squander capital for propaganda purposes".

This attitude was clearly based on self-serving grounds, typical of the old colonial capitalism under which managers saw their responsibilities primarily in terms of maximizing profits for their companies and shareholders with duties to the community coming last. ⁹ When such a community was largely African or racially different there was even less incentive to invest. It is significant in this regard to note that while these companies were denying all responsibility for inducing commerce and manufacturing in the territory on the basis of the narrowness of its market, they were deliberately paying their

7. John M. Mulwila, Parastatal Companies and The Law in Zambia (Ph.D. Dissertation, University of London, 1980) P.27.

8. B.S.A. Co. Chairman's Statement to the Shareholders, 7th February, 1962. London.

9. See Tom Hadden, Company Law and Capitalism, 2nd edition (London: Weidenfield and Nicolson, 1977).

African workers very low wages. They even went further by creating a system of discrimination called "job reservation". According to that system only Europeans entered into skilled and well paid jobs. Africans on the other hand, being unskilled and not entitled to any training were only hired to do manual jobs despised by Europeans. As far as the mining companies were concerned job reservation and bigger wages for Europeans were unavoidable practices as they helped them to attract necessary skilled manpower into what was then considered an unhealthy climate where even the barest amenities were lacking, while the line of unskilled and illiterate Africans seeking work was unending. ¹⁰

In reality job reservation was a symptom of the racialism that existed on the copper mines. The European trade unions saw it as a tool for safeguarding their members' interests and jobs and therefore stood firm against any acquisition of skills by Africans - still more their exercising them or obtaining full reward for them. ¹¹ The government was itself not neutral in this matter. The campaign to stop Africans from acquiring skills was allowed to spread from the copper mines to all areas involved with African employment. These discriminatory practices even gained legal backing, for

10. John M. Mulwila, op. cit.

11. Michael Buroway, The Colour of Class on The Copper Mines: From African Advancement to Zambianization; Zambian Papers, No.7 (Manchester: Manchester University Press, 1972).

until 1959, it was criminal for any African to allow himself to be engaged as an apprentice. ¹² Any person engaging an African in that capacity was also guilty of a criminal offence.

It is known that the foregoing measures were not the only deliberate acts perpetrated to keep the market and industrial base of Northern Rhodesia narrow. Dr. Busschau for instance, has urged that despite low wages and job reservations, there was still a significant level of savings which could have been loaned out for investment in diverse areas. ¹³ In addition, he asserts that even if the local market was itself narrow, surely outside markets were wide enough to receive the territory's goods had there been willingness to make them. In this regard it is significant to note the sentiments of members of one government committee:

"Northern Rhodesia is in a favourable position for the export of manufactured articles to Southern Rhodesia, Bechuanaland and the Northern Rhodesia - Congo Basin Area. The manufactured goods of Southern Rhodesia must pay a duty to enter South Africa, and similarly Southern Rhodesia protects its industries from the Union manufactured articles by the imposition of a duty. Northern Rhodesia, on the other hand, has free access to Southern Rhodesia and South Africa". ¹⁴

12. See Section 3, The Northern Rhodesia Ordinance No.15 of 1943, in supplement to the Government Gazette dated 24th December, 1943. See also The Manpower Report (Lusaka, Government Printer, 1966) P.1.

13. W.J. Busschau, Northern Rhodesia Report on the Development of Secondary Industries. 1945 Lusaka at P.40.

14. Northern Rhodesia, First Report of the Advisory Committee on Industrial Development, March, 1946 P.2.

Despite these assurances arguments about the narrowness of the market continued to persist. This led many commentators to conclude that there was a ploy to retain Northern Rhodesia as a market for the products of other countries particularly Britain and white dominated Southern Rhodesia and South Africa.¹⁵ Thus, while Northern Rhodesia kept sending unprocessed copper ores, she continued also to import finished copper and other products to sell to her people.

4:1:2 The Attitude of the Northern Rhodesia Government

Company rule in Northern Rhodesia ended in 1924 and was followed by a new administration which was directly under the colonial office. This change did not however, produce a difference in attitudes towards the moot issue of investing in non-mining areas or inducing others to do so. For its part the new administration immediately accepted the notion that it lacked funds for non-mining investments.¹⁶ Government officials never tired of saying that the government was unable to balance its budget, particularly between 1924 and 1935. They were helped in this by a line from the PIM¹⁷ Report which acknowledged the government's financial constraints. The

15. See e.g. Robert E. Baldwin, *supra* Table 1, at P.181.

16. See e.g. Statement by the Acting Chief Secretary, Northern Rhodesia Legislative Council Debates, 2nd April, 1946 Col.150.

17. Report of The Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia (Chaired by A.W. Pim) (London, H.M.S.O., Colonial No.145, 1938) P.91.

officials however tended to go beyond the commission's position, which was merely to recognise that the government has fewer sources of revenue for administrative purposes. It identified the three principal sources as customs duties, native and income taxes. On the question of the £238,000 which the government had received from the British treasury at the time of handover by the B.S.A. Co., officials were quick to assert that that was a loan not a grant, and that in any case it had become depleted in payments to recover a deficit. Other funds such as those from the Colonial Development Fund and the Beit Railway Trust, it was said, were utilised for non-profit yielding social purposes such as schools, water-boring, bridges and aerodromes with the remaining collections from other local sources merely amounting to £1,000 in 1938.

With regard to the allegation that proper investment could not be attained because of preoccupations with social functions, this was belied by the poor quality of life for the majority African population at the time. Economic and political favour continued to be directed to the settlers at the expense of the Africans and of general economic growth. The B.S.A. Co's. policy which allowed only European farmers to supply the agricultural requirements of the mines was continued. This policy was a follow up to an earlier one of supplying the African workers with food as part of their wages, thus reducing their net income and ensuring that they were perpetually dependent on their jobs for subsistence. These European

privileges were accompanied by an allocation of higher sales quotas and prices for European products. The Maize Control Ordinance of 1936, ¹⁸ for example, established a maize control board and gave it powers to purchase and sell maize at fixed prices. Africans were allocated only a quarter of this market while three quarters went to Europeans. Similarly the Cattle Marketing and Control Ordinance of 1937 ¹⁹ achieved much the same results in respect of livestock marketing. The government also followed similar policies in the area of native taxation which was introduced to force able bodied African men into wage employment in the mines and other European facilities. The consequent social effects such as the rise in the rate of divorces as a result of adultery between wives left behind by their husbands and remaining or returning men as well as invalids and older men were ignored. Similarly, the reduction in the productive capacity of the African sector caused by such absence of a capable workforce were glossed over as they allowed for increased production in the settler sector. The irony of the whole policy was that while taxing the Africans the authorities, with all their claims about subscribing to the cause of morality, accompanied by an express undertaking to pursue justice, were unwilling to incur more than a minimum on administrative costs required to maintain law and order for the

18. Vol.111 CAP 98.

19. Vol.111 CAP 3. See also Robert E. Baldwin op. cit.

preservation of the dominant European interests. 20

The ultimate result of this inequitable system of distribution of the territory's resources was the creation of a "dual economy" comprising a highly profitable mining, farming and trading sector reserved for Europeans, while the rest of the economy consisted of a stagnant subsistence sector occupied by the bulk of the African population. 21 Even a change in the colonial policy which was ushered in by the Colonial Development and Welfare Acts 22, did not produce significant results. The content of those Acts was that the British Government undertook to ensure that the interests of the indigenous peoples of the colonies were preserved and that certain investments would be encouraged to promote diversification in the economies of colonial territories. 23 Towards this end the government provided some money for investment and created The Colonial Development Corporation and the Overseas Food Corporation to act as instruments for capital

20. P.E. Ollawa, Participatory Democracy in Zambia, The Political Economy of National Development (Devon: Arthur H. Stockwell Ltd, 1979) P.66.

21. Richard Jolly; "Economy", In Africa South of the Sahara, 1981-82 11th ed of a Survey and Reference Book of all Countries South of the Sahara including a "Who's who" of Major personalities in the Region (Europa Publications) P.1170. See also Ann Seidman, "Alternative Development Strategies in Zambia", Ltc No.86, Land Tenure Centre, 310 King Hall, University of Wisconsin at June 1973.

22. 1940 and 1945.

23. See United Kingdom, Colonial Development and Welfare; Dispatch, 12th November, 1945 from Secretary for Colonies, Cmd 6713.

generation in the colonies. While these bodies provided certain amounts of capital for investment, the cornerstone of the colonial policy was to encourage private sources to provide the bulk of the necessary capital.

But even after the colonial office had taken the measures just outlined above, The territorial government in Northern Rhodesia maintained the position that it had no capacity to expand beyond the services it was already providing. It was not until the Secretary of State for the Colonies indicated that the imperial government might assist should it become impossible for the government of Northern Rhodesia to finance development services at a necessary level that certain steps were taken to initiate diversification. One of the first steps was the creation of the said Advisory Committee on Industrial Development (ACID) whose task was to provide advice on matters on industrial development in the territory. Secondly, the government recognised that it could undertake certain projects on its own, but only in those cases where it was satisfied that the uncertainty involved was too great for private investors. For the bulk of the investments however, the government saw its role only as broker for private investors, inducing them with extra capital and technical advice, including soliciting for private loans for them.*

* see Robert E. Baldwin op. cit

of making loans for agricultural purpose. This last body was itself replaced in 1952 following the realization that some difficulties were encountered in reaching out to all farming areas. A centralised body - the Land Bank, was accordingly established to coordinate and supply agricultural credits. ²⁴ But like its predecessors, the Land Bank confined its services to European farmers. It was not until 1955, after the bulk of the European requirements had been assumed by the Federal government, that a small local scheme was set up to assist Africans. Under that scheme only £15,000 was placed in a revolving fund administered by the Director of Cooperatives and African Marketing to cater for the whole African population. ²⁵

By 1948 The ACID had already redirected the governments position to the old "Narrow Market" theories of the 1920s and '30s. It advised that: ²⁶

"Until the European population in Northern Rhodesia was increased to over 35,000 and the standard of living of the African population is raised above the present level, the internal market will remain too small to support manufacturing industries of a size to require financial assistance from the government."

24. John Inambao. Agricultural Credit Institutions in Zambia, Obligatory Essay, Submitted in Fulfilment of the Requirements of the LL.B. Degree, (University of Zambia (Unpublished) 1982) P.22.

25. Northern Rhodesia, Report of the Development Authority, 1955 P.15.

26. ACID, Third Report, May 1948 P.7.

How the African living standards were going to be raised in view of the low salaries and obstacles to agricultural production, remained unclear. Similarly, the promised procurement of more private investment and lending also lost momentum. These events shattered all the hopes that had been raised towards greater non-mining development in the territory. For this reason, in 1950 Mr. Welensky, in a move hailed as his only progressive act in colonial politics, tabled a motion in the Legislative Council calling upon the government to revive its investment programme.²⁷ In his address Mr Welensky urged the government to set up a local finance development corporation to assist in the establishment of industry and business in the territory. Not wishing to be seen as a non believer in private enterprise, he further recommended that private institutions should be invited to participate in the initiative, stressing however, that, should such an overture fail to materialise, government should proceed with the corporation's formation. Mr Welensky rested his contribution with the suggestion that an initial capital of £250,000 should be immediately pumped into the proposed corporation and that its management should be on business lines.

It was appreciated during debate on Mr Welensky's motion that considerable time would be required to decide the powers

27. Northern Rhodesia Legislative Council Debates, 8th September, 1950.

of the proposed corporation as well as in preparing and passing the necessary legislation itself for the corporation's formation. It was agreed therefore, that the Industrial Loans Board was to be set up first, and after a firm foundation it would be followed and taken over by a full-fledged corporation. The Governor announced that the board would be functional in 1951 with the following as its objectives: ²⁸

- (i) to assist industry with capital for varying purposes of development, including the financing of fixed assets, the installation of new labour-saving plant and equipment and the provision of working capital.
- (ii) To render such assistance only in cases where other existing means are not available on reasonable terms and for such time as may be necessary to achieve the object for which the aid has been given.

Even these modest advances however, did not get enough time to be firmly established, as the creation of the Federation of Rhodesia and Nyasaland brought new set backs. The Federal constitution stipulated that certain matters including commerce and industry were to be the exclusive responsibility of the Federal Government. ²⁹ Similarly, such key responsi-

28. General Notice No.1304, 1950.

29. Anthony Martin, Supra note 1, P.55.

bilities as power over income tax, non-African education and Agriculture fell under its control. This gave the Federal government power to tax the resources of the three territories and deploy them according to a plan which concentrated on the needs of the Europeans. Specifically, it was able to milk the tax and foreign exchange revenues of the Northern Rhodesia Copper mines, by far the biggest generator of wealth in the federation, for the benefit of the Europeans most of who lived in Southern Rhodesia.

There was also obvious bias on the part of the federal government in favour of Southern Rhodesia in respect of major projects. The biggest project, the hydro-electric scheme went of the Southern side of the Kariba Lake. This decision was significantly influenced by political rather than economic and technical considerations which favoured the Kafue within Northern Rhodesia. Similarly, the railway system was strategically placed and controlled by the Southern Rhodesians while the Northern side, with only a third of the system's assets assumed responsibility for over half of its liabilities. In industry, the only industries that went to Northern Rhodesia during federation were those which found it cheaper to supply the Northern market from separate factories in the North. Their products were usually low in value and therefore uneconomical to ship over long distances. Examples were maize milling, sugar refining, brewing and manufacturing of some building materials such as cement. The only other industries worth mentioning were

the ordinary service industries such as the motor trade, hotels, banks and retail stores. 30

While Southern Rhodesia claimed all the benefits depicted above, her finished products were simply dumped, as were South Africa's on the markets of the other members of the federation. Thus by the time of dissolution of the federation, Northern Rhodesia (later Zambia) was saddled with a load of public debt which was out of proportion to the benefits she might have received. Under the break-up settlement, the territory found itself with a national debt of £97 million compared with only £22 million which it had before it surrendered its autonomy 10 years previously. Similarly, in the case of the Railways, Zambia took on half of the liabilities even though Southern Rhodesia kept two thirds of its assets. 31

It was in response to these enormous problems that the government, while preparing for hand over to the Africans, decided to redefine its policy on industrial development. The outcome was a policy which placed more emphasis on private enterprise as opposed to the Welensky policy of government participation with or without private entrepreneurs. The policy as redefined was summed up as follows: 32

"The government believes that economic development should be achieved mainly through private enterprise and

30. Ibid.

31. Ibid.

32. Northern Rhodesia Development Plan 1961-65.

that Government activity should in general be limited to providing the best possible climate for that development, including the provision of supporting services such as research and extension services, as well as by the maintenance of a stable government".

4:1:3 The Formation of INDECO

Despite adopting a new industrial policy, the government still included certain aspects of Mr Welensky's proposals in the second stage of its plan. Accordingly the Industrial Development Corporation (INDECO) was created in 1960 as successor to the Industrial Loans Board. The corporation's responsibilities included, the initiation and carrying out of investigations into the possibility of establishing industries to process the territory's primary products. It was also required to provide information and advice to investors wishing to set up industries in the territory. In addition it was authorised to provide capital by way of loans or guaranteeing them from financial institutions, and in special cases it could form companies and manage them until willing private entrepreneurs came forward to acquire them. The corporation was also responsible for providing management and technical assistance to existing industries wishing them. These responsibilities were expanded in the 1961-65 Development Plan to give attention to rural development. 33

33. Northern Rhodesia Development Plan 1961-65. See also Northern Rhodesia, "The Role of INDECO", A Budget Address by Hon. T.C. Gardner, 7th July, 1961, Lusaka.

4:2 After Independence

It is clear from the foregoing that the country's greatest handicap during the colonial days was the absence of adequate private investors willing to come forward and invest in non-mining sectors of the economy. It is also clear that there was an acute shortage of financial resources from private financial institutions in the form of loans and investments. After independence the government quickly took note of these problems and produced an industrial policy which it thought would overcome them. The main objectives of the government's policy were: ³⁴

- (i) to diversify production so as to make the economy less dependent on a single export commodity; copper
- (ii) to achieve self sufficiency in consumer goods
- (iii) to create labour intensive industries which would contribute significantly to the development of people's skills.
- (iv) to establish industries in rural areas
- (v) to encourage the training of Zambian nationals as managers and technicians.

34. White Paper on Industrial Development, 1964 (Revised in 1966), Ministry of Commerce and Industry (Government Printer; Lusaka).

The policy nevertheless recognised that the government would have to be closely involved in development by stimulating it and even by undertaking ventures where there were specific reasons for not leaving the job in private hands.³⁵ Such reasons could involve an inability on the part of a given industry to attract private investment, for example. The policy reserved for the government the role of making development plans as well as the right to outline areas requiring urgent investment or those containing potential returns for investors. In this respect the first National Development Plan (1966-72) laid down the guiding framework for diversifying the economy from copper-mining to agriculture and other commercial fields. It also established a broad outline for social and economic infrastructure which would form a basis for further Development.³⁶ The main thrust of the industrial policy however, was to emphasise the government's task in creating conditions that are conducive to industrial development by private investors. Accordingly, the government adopted the following list of incentives:

35. This was in accordance with the advice of a UN, ECA and FAO Economic Survey team. See Report of the UN/ECA/FAO, "Economic Survey Mission on Economic Development of Zambia (also known as the Seers Report, Ndola: Falcon Press Ltd, 1964).

36. Ministry of Development Planning and National Guidance, First National Development Plan 1966-1970 (Lusaka: Government Printer, 1968).

(i) Tariff protection: ³⁷ This provided duty free entry or entry at low rates of duty for raw materials and capital equipment required for industrial purposes. This protection was accompanied by Anti-Dumping and "shut-out" provisions to protect local business from low priced imports and to keep out goods of similar nature respectively. ³⁸

(ii) Tax incentives: The Pioneer Industries (Relief From Tax) Act, 1965 was enacted to provide income tax relief on the profits of pioneer industries for a period of between two and five years. The Income Tax Act ³⁹ also permitted investors to deduct normal expenditure of revenue incurred wholly and exclusively for business purposes in producing business income. It also provided for allowances in respect of expenditure incurred on plant and machinery, buildings, patents, copyrights, trade marks, research, double-taxation, passage and pre-commencement expenditure.

(iii) The government also maintained a liberal exchange rate and regulations. Thus, subject only to the production

37. See Customs and Excise Act (CAP 667) and Amendment Acts Nos. 31 and 47 of 1965. See also Ministry of Commerce and Industry, Annual Report for the Year 1964 (Lusaka: Government Printer, 1965) P.7.

38. Section 4.

39. CAP 668.

of appropriate documentary evidence, investing enterprises were permitted to remit profits, dividends and interests abroad. They could also be granted permission to repatriate capital brought into Zambia together with increases in that capital arising from their operations. 40

Alongside the industrial policy and incentives accompanying it, the government also embarked on a new programme of investing in education, health, services, roads and other things that were needed for the initiation of meaningful development. Public expenditure on education alone rose to over £20 million in 1966-67, an increase of over 95 per cent. In contrast the colonial administration had spent only £5.1 million in 1963-64, £1.1 million in 1954, £131,000 in 1944, £26,000 in 1939 and £348 in 1924-25. All these projects were undertaken with maximum speed as the government contended that it had a backlog of development projects to clear.

In addition, the government accepted the UN/ECA/FAO Mission's advice and undertook to participate in industry to the extent that there were no willing or capable private investors. Most of the government's participation was to be

40. Zambia's Economic Revolution, Address by President Kaunda at Mulungushi, 19th April, 1965 (Lusaka, ZIS, Government Printer). See also Appendix to the Outline of the Government's Industrial Policy. Revised Edition, 3rd January, 1966. (Ministry of Commerce and Industry, Government Printer, Lusaka)

through INDECO, and only in productive as opposed to extractive or service ventures. In these latter sectors, if any government investment was required, it was envisaged that direct investment, possibly through the medium of civil servants or Ministers was more appropriate. Accordingly, the government held direct stakes in the Central African Electricity Supply Corporation and the Central African Road Services. Other important government deeds after independence included the creation of the Credit Organisation of Zambia (COZ) ⁴¹ as successor to the Land Bank. Through it the government intended to give loans to the most needy sectors especially small farmers and entrepreneurs. INDECO also performed the same task by making loans, with funds mostly provided by the government, to bigger industrial ventures.

4:2:1 Changes in Government Policy

Despite a liberal industrial policy and generous incentives, there was no queue of foreign investors anxious to be given an opportunity to bring their money and skills into Zambia. Domestic investment by both the resident expatriate community and indigenous Zambians, that was hoped for, never

41. At independence the Land Bank became the Land and Agricultural Bank of Zambia. The latter was dissolved on 11th August 1967 and its assets and liabilities transferred to COZ under the terms of the Credit Organisation of Zambia Act, 1967. According to Section 28 of the Act, the organisation was permitted to lend to farmers, co-operative societies and small commercial and business ventures.

materialised, and if anything it even began to shrink as foreigners began to externalise more and more of their resources. A number of factors combined to produce these negative reactions to the government's new goals; chief among them was that in adopting its industrial policy the government was influenced by a number of deceptive factors and assumptions. First, at that time the country's economy was the richest and fastest growing in sub-Saharan Africa with an unlimited supply of capital in the monetary sense.⁴² Events occurring immediately before and after independence accounted for this boom and new sense of hope in Zambia's economic outlook. These events included the acquisition of the mineral royalties on the eve of independence which enabled the government to retain the mineral tax. These royalties had hitherto been going to the B.S.A. Co. The price and international demand for copper at that time were also reasonably high.

The second factor was the dissolution of the federation with Southern Rhodesia and Nyasaland. This event contributed to the retention of capital within the country. The result of these factors was that between 1964 and 1969 the GDP increased by 13 per cent (in 1965 prices). This represented an annual expansion of between 5 and 6 per cent as well as a tremendous improvement in the terms of trade.⁴³ Thus, even though the

42. First National Development Plan 1966-1970 P.1.

43. Richard Jolly, op. cit. P.1170.

government increased its spending there was still an excess of revenue. But things began to change almost immediately and the disillusionment about the permanency of the earnings and anticipated investments began to unfold.

The realisation that Zambia's good earnings and investment potential might not be able to solve all her problems or be permanent began with the advent of U.D.I. in Southern Rhodesia on November 11th, 1965. That development introduced new factors such as a border closure with Southern Rhodesia and a suspension of all trade. Many resources had to be expended in the process of diverting the country's trade and transportation routes to new areas. As a result, plans for more investments in production had to be abandoned.

The government was also disappointed with the attitude and behaviour of foreign investors, particularly British businesses. These businesses were unwilling to change from their colonial patterns of trade and communications. For them Zambia was a part of a large market, and their idea was to serve it by what were usually no more than branch distribution offices supplying goods manufactured in South Africa and Southern Rhodesia. Before UDI they generally showed no willingness to expand or localise their operations in the country as the Zambian government had hoped. Even when UDI occurred and the government took steps to cut off dealings with Southern Rhodesia, most businesses continued to believe it was only a matter of time before things reverted back to the pre-

UDI "normalcy". They were therefore unwilling to disengage from their operations across the border let alone establish what they considered to be an unnecessary duplication of production and supply systems in the same market. For example, when INDECO approached some of the transport companies to participate in the creation of an alternative route to the east, none of them was willing to come in on a long term basis. This forced INDECO to turn to Intersomer - an Italian company - to supply trucks. Similarly, the oil pipeline from Dar-es-Salaam to Ndola was built by Suain - Projetti, another Italian company after resident British and other companies operating branches in the country declined to take part.

Perhaps the most illuminating analysis of the British and other resident companies' psychology and lack of enthusiasm for the government's industrial policy and incentives is that offered by Anthony Martin.⁴⁴ Starting with these companies' general outlook on African markets, he asserts that these companies do not on the whole find the prospect of a near monopoly of a small African market potentially enticing if they are required to put themselves substantially at risk there. They usually start from a position of supplying a fair share of the market by exports from their existing factories, and they are not keen to complicate their lives by investing money to manufacture goods in a country whose policies they do not

44. Anthony Martin, op. cit. P.81.

particularly want to understand but where the risks of coups, nationalisations and sudden upheavals of policy as well as curbs on their freedom to make profits and send them home are certainly great if not incalculable. Thus, in the case of Zambia even the more forward looking companies who had realised that it would be impossible to go on supplying the Zambian Market from Southern Rhodesia, usually went no further than to bring Zambia under their East African operations and run it from what they considered relative safety in Nairobi as compared with Lusaka. The only way of reversing this trend would have been by using counter- psychological measures such as threatening to withdraw these companies' monopoly. This can be done through proof that the country concerned intends to interest another big company in the same line of business to put up a local plant with the consequence that the existing monopoly will diminish. These counter measures must overcome alliances between international companies and other obstacles that may be employed against them. Where these measures succeed, then only will these companies reluctantly consider an investment, but even then they will be looking for a maximum return on minimum investment. ⁴⁵ In the case of Zambia a more common tactic was to convert what had been a branch of a South African or Southern Rhodesian operation into a Zambian company with a small nominal capital, and carry on with the same structure of management and distribution.

45. Ibid.

It was however, the reaction of the resident expatriate businessmen which were the main cause of the government's disillusionment especially with those in credit giving businesses like banks. An obvious influence on government policy at independence was Kaunda's philosophical and political thinking of missionary christianity and moderate nationalism. His most passionately held conviction was that racial discrimination was iniquitous and that there was a need for a truly non-racial society in which the fundamental equality of man would be recognised. He envisaged that once the colonial government was out of the way, there would be an identity of interests between the government and the governed, including resident expatriate businesses and community. People's innate energies would thus be liberated and the way ahead would be cleared for political, social and economic development of the country. Other non-racist Europeans would also be welcomed into the country and their capital and skills would make a useful contribution to economic growth. There was little said about neo-colonialism or the dangers of capitalist exploitation.

From the beginning however, there was never much contact between government and the private business community it was trying to entice. Most Europeans in the first place supported the federation, and at the time of independence the majority of them thought of their roots as being in Southern Rhodesia. A typical white businessman had no friendly feelings about the African nationalists and no high expectations of what the new

government was likely to achieve. Few took seriously the government's assurance that they had nothing to fear if they identified themselves with the aspirations of the new country. For many the thing to do was to make much money on minimum investment as quickly as possible and take it out of the country without involvement in its political or social affairs. More charges were laid at the door of private business during the President's Mulungushi speech. These included such accusations as the unjustifiable reaping of excessive profits without reinvesting them in the country, operation of price rings, use of unacceptable management techniques and their reluctance to evolve personnel and training policies that were in accord with the country's needs.⁴⁷ As will be seen later, similar sentiments were expressed in relation to the lending institutions.

The demonstration of such a hostile attitude by so many resident businessmen or businesses, including those who had purported to make Zambia their home, was therefore another factor responsible for the gradual change of Kaunda's own attitude from the original one of laissez-faire envisioned in the industrial policy, though he still kept his non-racial ideal. The disillusionment was aggravated by the obvious

46. Ibid.

47. Ibid. See also, Zambia's Economic Revolution, An Address by President Kaunda at Mulungushi, 19th April, 1968 (Lusaka, ZIS. Government Printer) P.37.

collusion of some of the resident expatriates with the rebel Rhodesian regime, thus increasing the government's concern about national security.

4:2:2 The Economic Reforms

The economic reforms were introduced in three phases. The Mulungushi economic reforms appeared first in 1968. They were followed in 1969 by the Matero reforms. The last reforms came in 1970 and were known simply as the 1970 economic reform. The basic content of the reforms was as follows:

(a) The Mulungushi Economic Reforms:- These reforms were

introduced on 19th April, 1968 with the aim of promoting Zambian entrepreneurship as well as the extension of state participation in the commanding heights of the economy. When the President introduced them he said: 48

"it pains me, to see that three and a half years after independence there is not a single Zambian owned business in Cairo Road. There is not even a resident expatriate business for that matter with a Zambian manager in Cairo Road".

-- The President also reminded the nation of his government's industrial policy since independence which has been aimed at making members of the resident

48. Ibid.

expatriate communities identify themselves with the nation's aspirations and to Zambianise their businesses. Many of them he said, had chosen simply to take advantage of the economic boom so that they could make quick money and take it out of the country.

With regard to loans, the President said even though his government had tried to assist Zambians in that regard as well as with know-how through INDECO and COZ, these methods had failed. The government could lend very little money, mainly for fixed capital development, while the banks and other financial institutions which could have filled the gap by providing working capital were unwilling to do so. These institutions were openly aligned with expatriate businessmen to discriminate against indigenous Zambians. Accordingly, the President directed that thenceforth, the borrowing capacity of expatriates and expatriate enterprises would be restricted. Financial institutions were required to ascertain the nationality of all applicants for loans before approving such loans. Non-Zambian applicants were to be referred to the exchange control authorities who could approve or reject their applications using the same criteria as those used in the case of applications from foreign - controlled companies.⁴⁹ Under those

49. Ibid P.28.

criteria the main considerations were the size of a company's investment in the country and the type of business it was involved in. But above all the authorities considered the amount of money each company brought into the country. The aim of the directives was basically to enable financial institutions to acquire an excess of liquidity which it was hoped would be lent to Zambians to assist them in establishing business.

How and from where the President acquired the power to issue these directives remains somewhat unclear. In chapter six it will be urged that it is because bankers are aware of the dubious legal basis of these directives and that no other independent legal framework exists to ensure that they are followed, that nothing much in the way of obeying them has been done. The principal regulatory authority in the country, the Bank of Zambia, confines itself mainly to the management of inflation and other fiscal controls. Its main enforcement department - the inspectorate department is widely regarded in the bank as a dumping ground for ill-qualified and ineffective or erring employees. It also lacks appropriate measures or criteria of its own and confines its operations mainly to monitoring the outflow of foreign exchange and compliance with the exchange control regulations. 50

50. Private interview, Bank of Zambia Research Department, July 29, 1986.

The modification to the exchange control regulations which did not appear until 1972, also did not provide any enforcement mechanism. In fact these regulations have not incorporated the directives restricting the borrowing ability of non-Zambians in the way the President issued them. Under those modifications the Bank of Zambia, acting in accordance with its powers under the Bank of Zambia Act, directed that with effect from 10th January, 1972: 51

(i) applications by individuals other than Zambian citizens, exceeding K1,000 must be referred to the exchange control authorities.

(ii) (a) Loans or overdrafts to any body corporate (Zambian or non-Zambian) which was by any means directly or indirectly.

(i) controlled outside Zambia; or

(ii) controlled by persons who were not citizens of Zambia and

(b) A loan to any person (individual or body corporate, Zambian or non-Zambian) under terms whereby such loan was secured, whether by guarantee or otherwise by any individual who was not a citizen of Zambia or indirectly

51. Bank of Zambia A.D. Circular No.29, 8th January, 1972.

controlled outside Zambia or by any persons who were not citizens of Zambia were:

(i) in the case of individuals, if the amount exceeded K1,000 and

(ii) in the case of a body corporate, to be referred to exchange control.

(iii) Applications for foreign exchange on behalf of a body corporate were to be considered only within a debt (equity ratio of 1:2; i.e. for every paid up K2 a company could borrow K1. Companies whose facilities exceeded the new limits were required to run down their balances to a specified figure within a period of six months. Finally, facilities then existing which had not been utilised to the full extent under previous approvals were not to be made use of if such use of them entailed that new limits would be exceeded.

It is clear from the circular containing the directive that it applied to persons seeking loans for the purposes of obtaining foreign exchange. It is also clear that Zambians were just as much affected by the restrictions as were non-Zambians. Moreover, it is important to note that in subsequent modifications no references are in fact made to the nationality

of any customers seeking loans or foreign exchange. 51

It is also significant to point out that the President's directives, including the one restricting the types of business for expatriates and areas where they could do their businesses could be circumvented and contained two undesirable characteristics. First they contained a recipe for corruption. For instance upon realising that their businesses were in danger of being given to indigenous Zambians or of losing access to loans, many expatriate businessmen registered their businesses in the names of Zambian born children, who were by law Zambian citizens. 52 There were also those who sought to beat the measure by themselves acquiring Zambian citizenship. Among this group, there were those who employed unorthodox and illegal means to acquire citizenship. They used bribery of government officials to cut-short the procedures and requirements relating to naturalisation or residence. Thus, in the People V. Mulwanda 53 the accused was convicted on six counts of corrupt practices involving large bribes which he was found to have accepted as a senior civil servant for the purposes of giving Zambian citizenship to people who were not

51. See e.g. Bank of Zambia, Modifications to Foreign Exchange Arrangements, 1985. See also the June 1972 regulations, Chapter 5 P.234

52. Under Article 7 of the Independence Constitution, a person born in Zambia whose father was an established resident became a citizen at the time of his birth until the age of twenty-two years when he could renounce it or renew it.

53. [1974] ZR46. See also Nyalugwe V. The People [1976] ZR176 and SenSenta V. The People [1976] ZR184.

entitled to it.

Secondly, with regard business areas and trade licences, these were potential tools for political intimidation and antagonisation of members of the opposition. In fact, during one of his speeches, the President threatened to sack his Minister of Commerce and Industry if he renewed trading licences belonging to members of the opposition. ⁵⁴ Thus in Collins Nalumino Simioti V. Livingstone Municipal Council, ⁵⁵ the applicant alleged that he was denied a trading licence by reason of his membership of the opposition party. Perhaps the only consolation for expatriate businessmen was that this latter power was directed mainly at indigenous Zambians.

Other measures introduced at Mulungushi to help Zambian entrepreneurs were:

- (i) the limiting of road service licences to Zambians. In the case of companies, or co-operatives only those with at least 75 per cent Zambian ownership could qualify.
- (ii) Limiting of the grant of building materials to Zambians.

54. Richard Hall, The High Price of Principles, Kaunda and the White South (London: Penguin African Library, Harmondsworth, 1973) P.52.

55. Selected Judgements of Zambia (No.9 of 1969) Lusaka High Court, Civil Case No.1969/HP/43 P.54. See also Chandacka V. Luanshya Municipal Council Selected Judgements of Zambia (No.1 of 1969) Ndola High Court Civil Case No. 1969/HN/169 P.99. See also a related case of Chilufya V. City Council of Kitwe [1967] ZR115.

- (iii) a directive to large companies wishing to make sub-contracts to hire Zambian sub-contractors.
- (iv) Awarding PWD contracts of less than K100,000 only to Zambian businessmen.

Finally, the government introduced active state participation in leading industries so as to achieve full control of the means of production (outside the mining sectors. Owners of twenty-six big companies were invited to sell 51 per cent of their equity to the state. INDECO was instructed to carry out the negotiations for these acquisitions and to hold the 51 per cent equities on behalf of the government.

- (b) The Matero Economic Reforms:- The second round of economic reforms was announced at Matero township on 11th August 1969, ⁵⁶ where the President made known his intention to takeover 51 per cent shares in existing and future mining companies. Naturally this came as a shock as hardly a year earlier, during the Mulungushi reforms, the President had promised to leave the mines alone, saying they were "too big business for us". ⁵⁷ The President explained that this move was unavoidable as it

56. Kaunda D.K., "Towards Complete Independence"; The Matero speech, August 11, 1969 (Lusaka, ZIS, Government Printer).

57. Zambia's Economic Revolution op. cit.

had become imperative for the state to have a stake in the dominant means of creating wealth and use that to spread development.

(c) The Last Economic Reforms - The wave of economic reforms

was completed on 10th November, 1970, ⁵⁸ when the President announced his government's intention to enter the financial field, which comprised the banks, insurance companies, building societies and hire purchase companies. The President was critical of the staffing policies of the banks and the rate at which they opened new branches in rural areas as well as their policies towards lending to Zambians. Although the government had established the National Commercial Bank in 1969, it was felt that this would necessarily take time to expand. ⁵⁹ It was therefore decided to take 51 per cent of the shares of the Standard Bank and those of the Barclays Bank DCO. Barclays Bank DCO would then be merged with the National Commercial Bank to form a new state bank with 49 per cent of the shares accruing to Barclays Bank DCO. A second national bank would be established through the merger of the Standard Bank and

58. Zambia, This Completes Economic Reforms: "Now Zambia is ours", An Address by President Kaunda, 10th November, 1970.

59. See Bank of Zambia, Report and Statement of Accounts for the Year ended December 31st, 1970. P.35.

the remaining banks, viz, the National and Grindlays Bank and the Commercial Bank of Zambia Limited. The only accepting house in the country, the Merchant Bank would also be required to offer 51 per cent of its shares to the state. The president also announced that all foreign insurance companies and building societies would be closed and their businesses would be taken over by the Zambia State Insurance Corporation and the Zambia National Building Society respectively. At the same time a Finance Development Corporation (FINDECO) was formed to take care of government interests in all financial organisations as would INDECO in industry and MINDECO in mining. All three were in turn to be subsidiaries of the Zambia Industrial and Mining Corporation (ZIMCO).

What was most notable about the government's stated intention to participate in the banking sector was the change of method of that participation. In the past the practice was to acquire 51 per cent of the existing share capital. In the case of the banks, the government wanted to participate in the existing enterprises by contributing additional capital. The President explained this change of strategy as follows: 60

"In the case of the banks, I am aware that they are in need of additional capital if they are going to break away from their parent organisations. In view of this, instead of buying 51 per cent of their shares and thus making a payment, we shall acquire control by additional

60. Supra note 55. at P.10.

contribution thus ensuring that all the existing capital of the banks will remain in the country."

The details of the arrangement were never released and negotiations between the banks and the committee representing the government of Zambia, with the Attorney-General as chairman and including the governor and ex-governor of the Bank of Zambia as members, continued into 1971. These negotiations eventually aborted. In the words of Mr. Mwanakatwe (then Minister of Finance), when introducing the Banking Bill: ⁶¹

"It became evident from the very beginning of the negotiations that the terms and conditions under which the commercial banks were prepared to hand-over to the state would not be properly reconciled with the government's objectives and the terms and conditions demanded by the commercial banks (except the Commercial Bank (Zambia) Limited) were extortionate and unreasonable. They could not be accepted by the government. Consequently, in the absence of reasonable basis for a compromise, the negotiations for the take-over of banking business in Zambia had to be abandoned".

This failure by the government to reach an agreement with the banks, has been interpreted by Rothchild and Curry as a sign that the government had learned a lesson from its take over of the mining companies where the master agreement as well as the management contracts were heavily loaded in favour of the companies. ⁶² They also saw it as a reflection of the power

61. Banking Bill 1971, 2nd Reading, National Assembly Debates, No.28 of 23rd November - 3rd December 1971 at P.297.

62. Donald Rothchild and Robert L. Curry (Jr), Scarcity, Choice and Public Policy in Middle Africa (Berkeley: University of California Press, 1978) P.167. See also J.M. Mulwila, *supra* P.102. and Patu Simoko, Why Under Development? (Lusaka: Third World Publications, 1981) PP.16-25. For the Master Agreement, see M.L.O. Faber and J.G. Potter, *Supra* note 6.

of multinational companies over small and economically weak countries.

To preserve at least a degree of its objectives in the financial sector, following the failure to negotiate a settlement with the banks, the government introduced the Banking Act, 1971 which introduced a revised policy on banking. The Act withdrew the Merchant Bank's monopoly in the sphere of accepting and discounting bills and authorised all commercial banks to engage in that business.⁶³ It also introduced changes in the sphere of capitalization, management licensing and registration.⁶⁴

4:3 The Economic Situation After Reforms.

The reforms of 1968 to 1971 were followed in 1972 by a new National Development Plan whose objectives were the following:⁶⁵

- (i) to improve the rural standards of living and create a self-reliant and progressive rural society.
- (ii) to create new jobs in the rural areas and to improve infrastructural services related to increased rural

63. The Banking Act, 1971 Section 4(4).

64. See Chapters One and Three.

65. Republic of Zambia. Second National Development Plan 1972-76. PP.3-4.

productivity in order to curtail rural-urban drift.

- (iii) to increase the contribution of the rural sector to the gross domestic product.
- (iv) to promote a diversified national economy.
- (v) to achieve self-sufficiency in staple foods and reduce dependence on imports.
- (vi) to improve nutritional standards by increasing production and encourage consumption of protein-rich and protective foods.

These aspirations together with the measures already discussed were intended by the government to see the country into a prosperous future. Unfortunately however, Zambia's national economy continues to show no signs of improvement. In fact by the time of the introduction of the Third National Development Plan in 1979, the economy was in total disarray. In 1970 the economic picture ceased to be as bright as it had been during the aftermath of independence. The boom of the early independence years became eroded by the ensuing fluctuations in copper prices and demand. The enormous expenditure within a short time, on too many social projects and services which occurred after independence also contributed to the decline, as did the re-routing of imports and exports through East Africa after UDI and later during the Angolan Civil War. While most of the investment in social services was necessary and constituted

a significant response to the legitimate expectations of the people, in circumstances commonly known as the "crisis of expectations", ⁶⁶ there is no doubt that a degree of spacing might have eased the burden somewhat. In doing so Rene Dumont's lesson that, too much emphasis and investment in social structures or infrastructure in a backward country is tantamount to sacrificing the hope of increasing production in order to gain immediate satisfaction and is in the long run anti-social, would have been learned. ⁶⁷ In other words, policies oriented in the line of social investment lead to an inevitable drying up of monetary resources as no local wealth is created by social infrastructure. Immediate evidence of such drying up of resources in Zambia's case should have been seen from the government's failure to meet the targets it set for itself in the first national development plan, such as the creation of one hundred thousand jobs by 1970. Similarly, the failure of the plan's objectives to achieve an investment of K560 million during the four years of its duration also ought to have induced caution. Of the government's resources earmarked for investment in accordance with the plan, all had been wiped out by the end of the second year. ⁶⁸ Needless to say, this was an

66. see Anthony Martin. op. cit.

67. Rene Dumont, False Start in Africa (London: Andre Deutsch, 1966) P.48. See also Richard Hall, "Zambia; the First Twenty Years", Observer Magazine Survey, 21st October, 1984.

68. See Third National Development Plan, 1979. P.4. See also Anthony Martin. op. cit. P.40 and Richard Hall, Observer Magazine , Supra P.131.

indication that though private investment and loans had been solicited but largely declined, they ought to have been courted further on a different strategy than that employed in the reforms and related legislative enactments. The decline is also an indication that by themselves development plans are of limited value. In this regard it is notable that both the central and provincial governments have lamentably failed to implement the planned objectives. It is also notable that improperly appraised projects are not uncommon. Other notable factors are the acute shortages of skilled manpower and the existence of price controls that are unrelated to economic costs and therefore stifle development, despite plans to do otherwise.

The situation of decline is aggravated by the rapid population growth which has seen the country's overall population move from 4.3 million in 1971 to over 6 million by 1979, an increase of 3.2 per cent per year.⁶⁹ Another factor was the occurrence of a mine disaster at Mufulira at the end of 1970 which adversely affected the overall national income, balance of payments and budgetary receipts.⁷⁰ The impromptu redemption of the ZIMCO loanstock and bonds⁷¹ in 1972 also caused the national income to dwindle even further. These were

69. Third National Development Plan 1979. P.2.

70. Ibid.

71. These were the means of payment for the Mines which were taken over in 1969 in accordance with the Master agreements. Upon realising that the country had been out manoeuvred by the Mining team at negotiations the president abruptly announced the redemption of the bonds and loan stock. See Address by President Kaunda. State House, 31st August, 1973.

not due for redemption until 1978 in the case of the bonds and 1986 in that of the loanstock.⁷²

A further aggravation arose from rising import costs. The country was paying enormous amounts on oil and other imported goods. Indeed contrary to what had been envisaged in the import-substitution programme enshrined in the second national development plan, the country sank even deeper into the system of importing highly-capital intensive technology as well as raw materials. On top of that the country has had to carry its exports to the door-steps of its customers while buying its requirements from those door-steps and bringing them all the way home at enormous cost. The level of mismanagement, bureaucratic red tape, corruption, subsidies, wastefulness and unquenchable lust for luxuries are also taking their toll on the country's resources.⁷³ One has only to look at the management scene in business to confirm this. That scene is littered with political appointees, many of them members of more than one business, a factor which denies them adequate time to concentrate on the affairs of any business let alone understand them. Other concerns are headed by former civil servants or primary school teachers whose only contribution to

72. For details on the terms of the Master Agreement see M.L.O. Faber and J.G. Potter, op. cit.

73. The passing of the Corrupt Practices Act (No.14) of 1980 at least confirms the view that corruption is endemic. See also E.F. Ssempebwa, "Law in the context of underdevelopment": Comment on the Industrial Development Act, 1977, 7-9. Zambia Law Journal 1975-77 on the view that lust for luxuries is now entrenched.

their companies is red tape and secrecy. ⁷⁴ These people's understanding of business operation is dubious. With the almost daily reshuffles that the President makes in company management, whereby erring managers are merely transferred to other companies rather than dismissed, most of the managers adopt a hands off approach so that they earn transfers to bigger and more rewarding companies. How their current companies are doing is therefore immaterial, as personal success is not tied to business success. This indifference is accompanied in all cases by huge expenditures on personal comforts like free electricity, entertainment, water, cars, servants, guards, travel and holiday allowances. ⁷⁵

To these problems must be added the ravages of the weather which have often reduced crop harvests, and the impact of inflation in the industrial world with its disastrous impact on the exports of primary commodities. The result is that by 1980, per capita G.D.P. was only K250 in real terms, representing a drop of some 20 per cent below the 1970 level. Indeed even this figure understates the disastrous declines of the second half of the 1970s. From 1974 to 1984, real G.D.P. per head was halved, private consumption per head declined in real terms by one-third, expenditure on government services per head by nearly one-quarter and government capital expenditure by nearly two-thirds. ⁷⁶ By 1980 severe shortages

74. See John M. Mulwila op. cit.

75. Patu Simoko, *supra* note 60. at P.32.

76. Richard Jolly op. cit.

of foreign exchange, basic goods (including basic food stuffs,) and for many Zambians, especially those in rural areas, severe pressures on living standards, became a common phenomenon.

Even though the government recognised much earlier, that one of the principal factors in the deterioration of the country's economic performance was lack of investment, it was not until 1977 that another enactment was made to woo foreign investors. The Industrial Development Act ⁷⁷ provided a set of incentives to foreign investors who invested in manufacturing and brought technology into the country. Even this however has done nothing to prevent the downward trend. Not many investors took advantage of it.⁷⁸ Although there was a slight growth in 1983, due mainly to an improvement in copper prices the subsequent down turn in 1984 prevented that improvement being sustained. The picture on the balance of payments and foreign exchange side has generally been similar and disturbing. The balance of payments has deteriorated sharply over the period of economic difficulties, resulting in the implementation in 1978 of a two year IMF stabilisation programme. But despite a slight stability, the country's domestic and external problems could not be cured and another appeal was made to the IMF in 1981 for bailing out. This reliance on the IMF continued for sometime, allowing for a short lapse in 1982 over allegations of

77. No. 18 of 1977.

78. See Anthony Martin, op. cit. P.86.

government non-compliance with the terms, until 1987 when negotiations irretrievably broke down. In 1985 meanwhile, a system of auctioning foreign exchange had been introduced to allow for the most deserving importers to have access to foreign exchange, as the country's reserves had literally disappeared. This method was also unsuccessful as bidders used it to externalise funds as well as bring in more luxuries. Today with a debt of more than US \$5 billion,⁷⁹ and despite occasional rescheduling of payments and donations of aid, Zambia's economy is in a sorry state. Even food stuffs which could be locally produced if local investments by local people with the help of local lenders are made, are becoming a problem for most people.

4:4 Conclusion

It is clear from the foregoing details that economic diversification and development have not been easy to induce in Zambia. Colonial governments of all kinds showed reluctance to commence non-mining ventures largely for what they called reasons of capital inadequacy. This was however, said in the face of enormous profits arising from copper mining and sales which were externalised as dividends; and in the case of those made during federation, poured into Southern Rhodesia.

It was not until the late 1930s that attitudes began to

⁷⁹. Times of Zambia, 4th December, 1986.

change and the need to improve the welfare of the colonial peoples began to be accepted. Some measures were therefore introduced to achieve this goal. These measures or policies were enacted into law in Great Britain in 1940⁸⁰ and 1945.⁸¹ The territorial governments were offered financial inducements and directed to promote economic growth in their territories.

But even after such policies and laws were adopted the territorial authorities in Northern Rhodesia still continued to express less enthusiasm to initiate change on account of financial difficulties. It was generally agreed however that the best way to stimulate diversity was by inducing private investment. Such inducements were however met with obstructions like the obvious bias in favour of Southern Rhodesia during federation and the existence of racialism which prevented a general extension of services like credit, marketing and technical skills to all peoples. Government participation had therefore to be called back for and this led to the creation of the Industrial Loans Board which subsequently became INDECO in 1960. Other public bodies were the Agricultural Loans Board which changed twice to Land Board and Land Bank, respectively.

When the independence government came to power in 1964, it took note of the problems which existed before independence

80. The Colonial Development and Welfare Act, 1940.

81. The Colonial Development and Welfare Act, 1945.

and resolved that it would take even bolder steps to initiate development. A new industrial policy which laid more stress on private investment and individual initiative was introduced. A new set of incentives were also introduced. Under the new industrial policy the government undertook to refrain from investment ventures itself except where private investors were unavailable or unable to venture on their own. It limited its participation to the provision of infrastructures and necessary social services. Where state participation was required on account of non-availability of private investors or their inability to do so, INDECO was to be the principal instrument of the government. It was also authorised to assist private investors with resources, know-how and other facilities.

But despite this liberal approach, the problems of inadequate investment in Zambia continued. These consisted of unwillingness on the part of immigrant private entrepreneurs to expand their business and identify with the country's aspirations. They also included the absence of financial resources, especially to aspiring Zambians owing mainly to the reluctance of financial institutions to help them. The government was therefore forced to reverse its earlier policy to assume a much bigger role in the country's economic life. Three sets of economic reforms were announced and the government acquired 51 per cent in most of the leading sectors, including the mines. Though similar measures in the banking sector did not materialise, the government attempted to achieve

its goals by introducing stricter legislative controls of operations. To date these measures have produced dismal results; if any. The economy has deteriorated to levels worse even than before independence. Admittedly other factors have played a major role in this decline. These factors include the introduction of UDI in Rhodesia which introduced new and expensive alternative trading and transportation relations, the decline in the price and demand for copper, the drought, mismanagement and corruption as well as lack of foreign exchange and the mounting foreign debt.

In chapter five we shall look into precisely how the country's banks responded to the calls for diversification. The chapter will establish the actual levels of participation so as to establish the legitimacy of the notion that their participation was unsatisfactory.

CHAPTER FIVE

THE ROLE OF COMMERCIAL BANKS IN ZAMBIA'S DEVELOPMENT

5:0. Introduction

This chapter evaluates the role played by banks in fulfilling government objectives for economic development. It has been seen that since the discovery of rich copper deposits in Zambia, the need for investment and working capital has remained high. During the early colonial days, the acuteness of the situation was revealed by admissions that were made prior to and after the change of policy by the imperial government in favour of colonized and dependent peoples.¹ The new policy which was later enshrined in the colonial Development and Welfare Acts of 1940 and 1945 required administrative authorities in all colonial and dependent territories to actively undertake measures aimed at improving the welfare of the native inhabitants of those territories. They were also required to undertake measures that would initiate a system of growth and economic development in their territories and to encourage private businesses and persons to invest there.

Before the coming into being of the imperial government's policy Northern Rhodesia's government reported

1 See Chapter Four.

that it was running budget deficits, as a result of which it could not contemplate any non-mining investment in the territory. Even after the coming into being of that policy however, the government's assertions of financial difficulty did not cease.² Perhaps the best known and principal cause of the shortage of financial resources for investment in Northern Rhodesia, a territory which was one of the leading producers of a highly profitable copper mineral, was the creation of the Federation of Rhodesia and Nyasaland. But before that, there were other causes. These included the attitudes of the administrators themselves and the settlers who saw the country only as a narrow market territory. Their policies towards agricultural production and marketing also did little to encourage the emergence of alternative sources of revenue. In addition, such policies as job reservations, poll taxes and poor social services for the Africans merely served to entrench stereo types against the majority Africans and inhibited the occurrence of conducive conditions for diverse growth based on objective considerations.

One indication of this paradox of fixed attitudes is that even after the government of Northern Rhodesia had realised that the solution to the problem of capital shortage lay in the opening up to private sources of capital and investment, not much improvement occurred. In terms of that realization the government had resolved that it would not

2 Chapter Four P.161.

participate in industry or give loans unless it was revealed after careful enquiry why such investments or loans could not be provided by private sources.³ While banks and other financial institutions continued to offer services, their response could certainly not be described as revolutionary. One of the principal causes of their caution and reluctance to openly identify with the government's policy was said to be the uncertainty of the territory's future. Dr Busschau⁴ was told in this regard that:

"Capital will not flow to the territory unless the colonial office decides whether this is to be a white or a black man's country".

As a result of these hard positions of the expatriate community and businesses, it became clear that non-mining development would be very difficult to attain in Northern Rhodesia. It was also for the same reasons that the legislative council was compelled in the early 1950s to create the Industrial Loans Board and in later years INDECO to dispense loans for other kinds of investment.

3 See Chapter Four P.165.

4 W. J. Busschau, Northern Rhodesia Report on the Development of Secondary Industries. Lusaka 1945, P.40.

5:1. Pre-Independence Commercial Bank Advances

That the territorial government had to enter the investment process by creating alternative institutions did not mean that the Banks were doing nothing at all. As stated before, these institutions offered services but only of a limited kind. But due to the absence of proper records it is not possible to determine the volume of any bank loans that occurred before the Federation of Rhodesia and Nyasaland came into being. According to Sowelem⁵ however, the activities of commercial banks during that time were characterised by two things. First they were mainly service oriented. In other words, they confined the bulk of their operations to acting as transmission channels which only handled funds for their expatriate customers, businesses and government. On the advances and loans side, and this is the second aspect, they geared their operations largely to one direction, namely, that of meeting the needs of importers and exporters of goods between the U.K., Southern Rhodesia and South Africa. These requirements were mainly temporary and introduced few potential risks as bank books could be balanced once the bills of sale and lading or any other forms of promise to pay had been delivered.

The best time for judging the lending aspects of the

5 R.A. Sowelem, Towards, Financial Independence in a Developing Economy. (London : George Allen and Unwin Ltd, 1967) P.79.

territory's banks before independence then would be the Federation period. During that time the level of credits to public and private sectors did indeed rise. Thus in 1952 for instance, total loans worth £25 million were recorded. But by 1963 these had risen to £53.2 million for the public sector alone, an increase of more than 50 per cent with some sectors recording even higher takings. During the same period banks invested £5.4 million in expansion and other services.*

The flow of credits during the period under discussion however, was neither uniform nor consistent. There were times when the rate of increase was comparatively higher, as for instance between 1954 and 1956, and in 1960. In other years they declined significantly. One of the reasons for the low levels of credit over the greater part of the federation period was the rate of fluctuation in the price and volume of copper sales which in turn affected the level of foreign exchange reserves. Because of such decreases in reserves credit availability declined because the government reacted by imposing credit restrictions and increased interest rates. Another important reason for the decline was the introduction of other sources of credit, although in the case of Northern Rhodesia such sources were introduced as a reaction to the lack of adequate credit in the first place. These sources were the Land and Agricultural Bank, the Industrial Loans Board and

* see R.A. Sowelem, op. cit.

statutory commission bills in respect of those of statutory boards and commissions. When the statutory commission bills were discontinued in 1959, the bodies concerned were catered for by the government by way of treasury bills.

By and large the most notable aspect about the dispensation of credit in Rhodesia and Nyasaland was the uneven way in which it was done, especially in relation to population groups and industries. As far as the African needs were concerned, the attitude of bankers was most notable for their unwillingness to expand their operations to rural areas. Taken together with the other physical and material handicaps that afflicted Africans as a whole, viz, their disadvantages in the areas of employment, collateral, title to land, and ignorance of business management, this attitude on the part of bankers effectively ruled out any meaningful extension of advances to the African sector. It was rather to the European sectors, especially in Southern Rhodesia, that most advances went. Thus when examining the pattern of credit dispensation by pre-independence banks in Zambia, the Seers Commission reported that:⁶

"One important feature of commercial banks in Zambia is the fact that loans to the public (enterprises and consumers) amount to only a fourth of their deposits from the public. It is not clear how commercial banks have invested the remaining three-fourths of their deposits,

6 Report of the UN/ECA/FAO Economic Survey Mission on the Economic Development of Zambia (Ndola: Falcon Press, 1964), P.141.

but presumably a substantial part has been lent to customers in Southern Rhodesia and other countries".

Another important aspect of the credit situation in Rhodesia and Nyasaland which tends to confirm the assumption that most of the loans went to Southern Rhodesia, was that the actual distribution of loans did not really take cognisance of the sectoral or subsectoral contribution to the GDP. In other words had the contribution to the GDP been the criterion for enjoying higher levels of loans, then Northern Rhodesia's copper mines which contributed the greatest share of revenue to the federal economy would have received the highest levels. But in reality the mines did not receive much from the banks albeit by choice to some degree. The mining companies saw little need to resort to local commercial banks for vital credits. These companies were in the hands of giant international companies and as such they relied mostly on their parent companies or had loans raised for them outside central Africa.⁷

Aside from that element of choice other determinant factors in the way loans and advances flowed were the practices and traditions that shaped British connected banks at that time. Those practices and traditions, commonly known as "the demand following finance" doctrines taught that it was not the business of banks to create conditions for investment; rather

⁷ R.A. Sowelem op.cit., P.79.

their capital must be attracted by already existing and less risky opportunities.⁸ Accordingly such banks tend to prefer short term self-liquidating loans. As far as the banks in Rhodesia and Nyasaland were concerned this tendency is clearly demonstrated by the following statement of a representative of British overseas banks operating in Africa which was made to the Radcliffe Committee.⁹

"we do not feel it is any part of our duty as bankers to provide more than temporary borrowing".

The underlying characteristic which makes self-liquidating short-term loans attractive is their predictability and the swiftness with which the banks can react to situations that may prevent recovery. These loans were seen as safe as they were usually supported with exported or imported goods or certificates thereof and marketable agricultural products. Furthermore, as they were short-term they were less likely to be rendered unprofitable by the effects of depreciation or other contingencies that visit long-term loans. Thus, as far as the banks were concerned their credit levels were adequate because they were able to monitor them.

In terms of the mining companies and other important sectors it was not worthwhile depending on the banks for working capital and other requirements because their outlook

8 See Chapter One.

9 Committee on the working of the Monetary System, "Minutes of Evidence" q.4372 cited in R.A. Sowelem op.cit.

and that of the banks were founded on different premises. As long term investors the mining companies sometimes took long to realise profits, and as such they could not all the time be expected to be in a position to discharge short-term obligations. With those leading entities out of the race for bigger loans smaller enterprises and other commercial activists enjoyed the bulk of the loans. Those enterprises and activists fell into three categories. These were in manufacturing, non-African agriculture and distribution. As earlier stated, the bulk of these were situated in Southern Rhodesia. In Table 6 the distribution of commercial bank advances is demonstrated.

TABLE 6

TABLE 6.

RATIO OF COMMERCIAL BANK ADVANCES TO GROSS DOMESTIC PRODUCT, BY SECTORS

Item	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963
1. GDP, market economy (factor cost)	£m 288.3	338.3	383.1	376.3	371.6	434.7	474.7	481.5	485.3	498.7
2. Commercial bank advances-total*	£m 27.0	33.4	40.7	41.7	39.6	40.1	50.4	52.0	50.5	53.2
2. as per cent of 1.	% 9.4	9.9	10.6	11.2	10.6	9.2	10.6	10.8	10.4	10.7
(a) GDP originating in mining and quarrying	£m 93.8	117.8	123.6	83.5	69.1	108.6	125.2	114.5	110.2	111.4
Bank advances†	£m 0.3+	0.6	0.7	0.9	0.9	0.8	0.7	0.9	1.0	1.6
(b) GDP originating in manufacturing	£m 26.9	32.7	37.2	43.7	45.8	49.6	54.1	60.0	63.0	65.4
Bank advances†	£m 4.6+	3.5	3.9	5.8	6.7	7.0	8.4	11.5	12.6	12.3
Advances as per cent of GDP	% 17.1	10.7	10.5	13.3	14.6	14.1	15.5	19.1	20.0	18.8
(c) GDP, non-African agriculture	£m 29.2	29.6	34.8	37.3	35.9	42.0	44.2	52.8	51.9	53.7
Bank advances†	£m 2.8+	4.7	6.4	6.0	7.0	8.2	10.1	18.5	9.0	10.1
Advances as per cent of GDP	% 9.6	15.9	18.4	16.1	19.5	19.5	22.8	16.1	17.3	18.8
(d) GDP, distribution	£m 34.3	38.8	43.5	47.9	49.2	53.3	59.7	59.7	61.4	62.7
Bank advances†	£m 10.3+	14.2	14.0	12.1	11.9	10.0	12.1	10.4	10.4	11.4
Advances as per cent of GDP	% 30.0	36.6	32.2	25.3	24.1	18.8	20.3	17.4	16.9	18.1

* Annual averages of quarterly figures.

† Figure for bank advances relate to September 1954, earlier data not available

‡ Averages for March and September each year except 1961, 1962, 1963 annual average of quarterly figures.

Source: R.A. Sovelen. P.80 - Citing Unpublished data provided by Bank of Rhodesia and Nyasaland, with reference to National Accounts 1954-63.

As can be seen from Table 6 (overleaf) bank advances to the manufacturing sector were quite high during the period of federation reaching £66.5 million in 1963 compared with £26.9 million in 1954. This placed manufacturing in second place after mining which had £93.8 million in 1954 and £111.4 million in 1963 respectively. Two factors influenced this rise in the level of lending the manufacturing sector. The first was that there was reluctance on the part of the parent companies to supply funds to their subsidiaries in Rhodesia and Nyasaland due to the unsettled political situation, particularly at the end of the 1950s and the beginning of the 1960s. In the absence of such support local manufacturing enterprises looked to the banks for their short-term needs. A significant expansion in manufacturing was also taking place, particularly in Southern Rhodesia where it was encouraged by settler leaders who sought to achieve the confidence of white settlers as well as to establish a more stable country for their permanent settlement.¹⁰

The second source of influence over the levels of commercial bank credits to the manufacturing sector was the increasing expenditure on industrial development which was taking place in the United Kingdom itself. That expansion obliged the parent companies to many of Rhodesia and Nyasaland's companies to invest more at home; compelling their subsidiaries to turn to local banks for injections of working capital.

¹⁰ R.A. Sowelem op.cit., P.80

A sector which absorbed the largest proportion of bank advances during federation was distribution. This sector covered a wide variety of activities in the wholesale and retail business. It also included dealers in new and used vehicles.¹¹ Sowelem's data on this sector again shows why it was a favoured sector, namely, it represented the largest scope for the export and import trade which the local banks were in essence set up to serve.¹²

The non-African agriculture sector constituted the last of the most important drawers of bank loans during the period under discussion. This sector prospered and attracted bankers for two related reasons. First, this sector was a highly subsidised and favoured sector for which the federal government was directly responsible. Secondly as a result of such protections and favours it presented a very secure business for the banks which responded with ever rising credit levels.

The loans to this sector followed a distinctive seasonal pattern, rising during the pre-crop seasons and declining in the second and third quarters of each year when repayments were made out of the crop sales.

11 Ibid

12 Ibid, first data was provided in 1954.

5:2. Commercial Bank Advances Before the Reforms

As seen in the last chapter the independence government of Zambia came to power with a resolve to achieve economic development sooner rather than later. Its initial industrial policy showed this, albeit with an emphasis on private investment and credit, leaving government to become involved only in a supporting role or in the event of extreme necessity. At the same time the country was endowed with excessive liquidity which arose out of the booming copper sales and demand. The expatriate banks operating in the country benefited immensely from this and by the end of 1965 they were in possession of considerable liquidity, with spare cash held in banks abroad. Their total deposits which stood at about K91 million at the end of 1965 had reached K140 million by 1965, a record rise of 54 per cent over a two year period.¹³

No definitive data regarding the size of credit levels of commercial banks during the early years of independence are readily available.¹⁴ Although a special investigation was conducted by the Bank of Zambia in 1968, four years after its establishment, the interpretation of its findings was by no means unanimous. N.A. Mujumdar¹⁵ for example, suggests that

13 see C.R.M. Harvey, "Financial constraints on Zambian Development", in Charles Elliot (Ed) Constraints on the Economic Development of Zambia (London: Oxford University Press, 1971), P.120.

14 The Bank's coding system which operated during the early years of independence was not designed to furnish such data.

15 N.A. Mujumdar, "The New Economic Policy - Implications for The Banking and Monetary Sectors", in J.B. Zulu and N.A. Mujumdar, Money, Banking and Economic Development in Zambia (Lusaka : Bank of Zambia, 1970), p.14.

the total level of loans and overdrafts outstanding at the end of 1968 was in the order of £93 million. His co-author and one time Bank of Zambia Governor, J.B. Zulu¹⁶, on the other hand, puts the figure at £71 million. At the extreme end comes another researcher, C.R.M. Harvey¹⁷ who states that from the time of independence to June 1968, the rise in loans and advances amounted only to £54 million. But despite such lack of consensus, all are agreed that the best way to comprehend the significance of commercial bank credit during the aftermath of independence is not by looking at the distribution of such credit to particular industries in the economy. Instead virtually all their studies examine the nature of pre-reform credit in terms of its outflow to the local and non-local sectors respectively. The local sector has been treated as comprising the government sector industries which include both the central and local government, indigenous private companies and public corporations and boards such as the National Agricultural Marketing Board (NAMBOARD), the Cold Storage Board, the Dairy Produce Board and INDECO. In the category of indigenous companies were included companies which were exclusively owned and controlled by Zambians* as well as those in which Zambian interests amounted to 50 per cent or

16 J.B. Zulu, "Commercial Bank Credit in the Zambian Economy" in J.B. Zulu and N.A. Mujumdar, Ibid, p.40.

17 C.R.M. Harvey, "Financial Constraints on Zambian Development" in Charles Elliot (Ed) Constraints on the Economic Development of Zambia (London : Oxford University Press, 1971), P.122.

* A very rare phenomenon at that time.

more. Obviously therefore, all those companies in which INDECO or Zambian nationals had controlling shares fall into this category and as such the credit extended to them was regarded as credit accruing to the Zambian sector generally. But as J.B. Zulu¹⁸ points out, a strict treatment of that credit would have further divided it into local and non-local components corresponding to the respective proportions of the share capital contributed by each side. This would have revealed the true extent to which commercial bank loans were going to Zambians or Zambian owned businesses. At that time however, such a sophisticated exercise was not possible as data relating to the origin and levels of shareholding of the borrowing enterprises or persons were neither readily available nor required by law to be with commercial banks. They therefore relied on how the borrowers described themselves. Apart from the categories referred to above the rest of the economy was treated as belonging to the non-local sector.

Having classified the sectors as shown in the preceding paragraph, it was established that about 77 per cent of the total loans and advances made by commercial banks went to the non-local sector. In other words, despite incorporating into the Zambian sector many industries which were really foreign owned, it was discovered that nearly all, except just 23 per cent, still went to foreign owned enterprises. In addition it was also established that of those foreign owned enterprises which enjoyed the bulk of commercial bank loans, it was really

18 Op.cit., P.40.

the biggest ones that benefited most. Thus according to Mujumdar, of the £93 million that he had estimated to be the total of credit that was generated, £84 million went to this category.¹⁹ J.B. Zulu²⁰ reaches a similar conclusion, finding that 90 per cent of all commercial banks loans went to only 400 accounts with the residual 10 per cent being shared out to more than 6,500 accounts. Another striking feature about the loans to those big companies was that they were mostly in excess of K20,000 which explains why smaller Zambian enterprises could not afford them.²¹ Tables, 7,8 and 9 illustrate this outflow.

19 N.A. Mujumdar, op.cit.

20 Op.cit.

21 N.A. Mujumdar, op.cit.

Table 7 - Loans and Overdrafts at the end of December 1968

	Government (including Central and Local Governments but excluding pub- lic corporations)	Public Corporations	Corporate Bodies		Private Accounts		Unspecified Categories	Total
			Zambian Com- panies and Corporations	Non-Zambian Companies and Corporations	Zambian	Non-Zambian		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Banks Combined	679	2,094	12,911	51,623	987	2,588	156	71,037

Source : J.B. Zulu, "Commercial Bank Credit in Zambia Op.Cit. P.43.

Table 8 - Loans and Overdrafts to Zambian and Non-Zambian Sectors

(Amounts in K'000)

	Zambian sector	Non-Zambian sector	Total Advances	Proportion of Credit to Zambian Sector (1) as a percentage of (3)
	(1)	(2)	(3)	(4)
Banks Combined	16,671	54,366	71,037	23.5

Table 9 - Loans and Overdraft Outstanding

as at the close of business -

19th April, 1968

Limits	No. of Accounts	Total amount outstanding
Up to K1,000	4973	K1,050,057
K1,001 to K5,000	1074	2,373,166
K5,001 to K10,000	302	1,942,459
K10,001 to K20,000	222	3,626,361
K20,001 and over	421	83,960,605
TOTAL	6992	K92,952,648

All banks (including Merchant Bank)

Sources : J.B. Zulu, op.cit.

The adoption of the Mulungushi economic reforms²² and some of the revelations accompanying them regarding the methods and patterns of lending by commercial banks confirm Mujumdar and Zulu's findings. But by the time of those reforms, the economic climate and condition of the country had begun to decline.²³ In terms of the banks, for example, by the end of 1968 their net balances held with banks abroad had moved from £7.8 million in 1965 to a negative figure of -£5.1 million. This means that Zambian banks had become net borrowers from banks overseas, mainly their own head offices or parent companies. At the same time their internal position was becoming similarly precarious; as it had started in some cases to press against the limits set for official reserve requirements.

The decline in the liquidity position of commercial banks did not however mean that the banks had no other resources. They still commanded considerable levels of notes treasury bills²⁴ and bills of exchange²⁵ as well as investments such as stocks²⁶. But for several reasons, these resources could not be easily used to alleviate the effects of decline. On the one hand, cash; especially till money, is

22 See Chapter Four.

23 See Chapter Four.

24 £7.7 million.

25 £20.8 million.

26 £8.5 million; almost entirely in locally registered stocks.

usually preserved for normal banking operations such as demand payments to customers. It could not therefore be used as an alternative item for credit transactions some of which might have been relatively longer-term. On the other hand, the use of the other alternative resources was hampered by the non-availability of a capital market in the country. Admittedly those resources could have been discounted with the Bank of Zambia. The banks however were cautious of the Bank of Zambia's monopoly in fixing the discount rates, a situation which could have subjected them to real losses. It could do this by increasing its discount rates or lowering the buying prices in respect of government or local government stocks. The selling of short-dated assets like treasury bills also would have left the banks open to the danger of losing their liquidity in the long-term even though it might have introduced no immediate loss.

The other possibility was to incur further indebtedness to their head offices overseas. As Harvey²⁷ asserts there is no reason why the big international banks should not be willing to allow head office overdrafts to branches in one part of the world albeit at the expense of branches somewhere else. Zambian banks had in fact just moved from such a position whereby they were net lenders to the rest of the world by way of transferring most of their excess liquidity and profits to head offices. But although some money had indeed been received

27 C.R.M. Harvey, op.cit., P.126.

from the head offices that option was of limited significance and tended at times to be unreliable. International banks were prepared to make advances in one country, in excess of the deposits in that country, only as a temporary measure; such as in respect of the seasonal requirements for agricultural implements and imports or marketing. Even during federation, any deterioration in the liquidity position of commercial banks was not treated differently. If anything such deteriorations almost always led to a corresponding slow down in the flow of credit from head offices.²⁸ What this means is that Zambian banks would not regard head office overdraft as a definite source of relief during periods of low liquidity. Sowelem adds that the attitude of the big banks on this matter is determined largely by their fear of exchange rate instability which could lead to losses.²⁹

What remained for the banks to do was restrict advances to their customers. Luckily, the decision to take this measure was made for them when the government introduced the Mulungushi reforms.³⁰ Bank credits to non-Zambians were severely restricted so that Zambians could borrow from the excess liquidity thereby created and thus acquire new enterprises or expand existing ones. Therefore as they entered the post-reform period Zambian commercial banks faced reduced liquidity levels as well as credit restrictions. The next section

28 See Charles Harvey, "The Control of Credit in Zambia", The Journal of Modern African Studies (Vol.3,1975), PP.383-385.

29 A. Sowelem, op.cit., PP.250-53.

30 See Chapter Four.

discusses how they reacted to the call to identify with the development aspirations of the country in the midst of these problems.

5:3. Commercial Bank Activities After the Reforms

As stated above the liquidity situation in Zambian banks which had been rising due to increased deposit taking during the post independence boom began to fall in 1968 in response to the rising rate of inflation and low levels of foreign exchange which affected business activity. During 1969 however, a small recovery in deposits was recorded until 1970. They fell sharply between June and July 1970 and fluctuated thereafter until November of the same year when high increases occurred. The contractions came as a response to the fluctuations in foreign exchange reserves because enterprises tended to deposit their funds during periods of short supply so that they could earn interest.

But even during good periods, banks were extremely cautious in the loan operations after the reforms. In December 1970; in the wake of the last reforms, total loans and advances were only £12 million higher than they had been at that time two years earlier. While the proportion of credit available to the Zambian sector increased, this was rather due to the controls imposed on lending to non-Zambians than to any marked

rise in credit generally.³¹ This is not to say however, that the government achieved complete success in its efforts to limit the borrowing ability of non-Zambians. As seen already non-Zambians could legitimately acquire credit after meeting the criteria of the exchange control authorities. Others gained credits by virtue of being companies or enterprises in which Zambians or the Zambian government held some shares.³² And as there was no way of ensuring that non-Zambians would not use Zambian proxies to enjoy credit benefits it is impossible to rule out that some of them may have used that avenue.

By the middle of 1971 the country's economic situation again began to show signs of strain.³³ This development concerned the Bank of Zambia which considered it to be a sign that the 1968 and subsequent measures were ineffective. Thus from 1972 onwards commercial bank lending in Zambia was very closely monitored and regulated by the authorities. In the next section it will be seen how such regulation and other factors influenced the credit situation in the country.

While reducing the borrowing ability of the private sector, the measures that the authorities introduced generally helped to raise the level of lending by commercial banks to the

31 See Bank of Zambia Report and Statement of Accounts for the year ended December 31st, 1970 (Lusaka: Bank of Zambia, 1970), P.9.

32 See P.217 above.

33 See also Chapter Four.

government, thereby financing its deficit. This can be seen from the increases in local registered stocks which rose from K22.6 million at the end of 1971 to K29.2 million by 1972. The holdings of treasury bills also increased. On the whole lending to government by these measures increased by 18.9 per cent during 1972.³⁴

It was not until 1974 when monetary developments reflected a substantial government surplus and a turn about in the balance of payments situation that lending to the private sector was substantially relaxed and demand remained high throughout the year. In addition to the lowering of ceilings, etc, on loans, the authorities also relaxed controls on the issue of import licences and instructions to importers. Indeed a circular was introduced to this end requesting importers to finance their requirements by borrowing from local institutions.³⁵ The introduction of these instructions suggests that the Bank of Zambia's controls were not water tight and that the authorities had become aware that importers had resorted to overseas credit facilities to run their operations. Total credits to both Government and non-government sectors during that period increased by 26.9 per cent compared with only 18.7 per cent recorded in 1973.

34 Quarterly Statistical Review, Bank of Zambia Vol.2, No.2 of June 1972, P.8. In fact 90 per cent of all government borrowing was provided by the banking system by 1978. See Michael M. Bell, Government Revenue stabilization in Primary Producing Countries: A Model for Zambia 21 Journal of Modern African Studies (1983) P55 at P65.

35 A.D. circular No.63 of 1974. See also Bank of Zambia Report and Statement of Accounts for 31st Dec. 1974, p.68.

But by the end of 1974 the drop in the price and demand for copper again brought back recessionary conditions. Banking sector liquidity which as a result of the previous years' substantial monetary expansion was very high began to decline gradually. Thus by the end of 1974, the liquidity level for all banks combined stood at 34.9 per cent compared with 53.4 per cent the previous year. This tight liquidity situation made it necessary for the authorities to take new steps, including the exercise of the power of lender of last resort by the Bank of Zambia to try and shore up the economy.

From 1975 onwards the economy has been on a downward track. But due to constant control by the authorities the liquidity levels in the banks have been rising instead of falling. Thus in terms of liquidity ratio this rose from 34.9 per cent in 1974 to 125.0 per cent in 1978.³⁷ The official minimum liquidity ratio requirement meanwhile had remained at 30 per cent only.³⁸ Aside from close control another possibility is that the government which was before the largest alternative channel for the bulk of that liquidity was no longer absorbing significant levels of it. Such government restraint could have been induced by failure on the part of the government to meet obligations of short-term borrowing any longer.

36 Bank of Zambia Report and Statement, Ibid.

37 Michael M Bell, *supra* note 32.

38 C.R.M. Harvey, *supra* note 14, P.123.

Surprisingly! despite such potential to increase credit levels, at least on a selective basis only one commitment was made in that direction. On the contrary strict regulation continued to be the case. The one commitment to selective lending occurred in the sphere of agricultural marketing where loans were authorised seasonally to enable the marketing organisations such as NAMBOARD and the co-operatives to purchase produce from farmers. It would seem that two reasons were responsible for the lifting of restrictions for lending to agricultural marketing organisations. First it was important to buy crops as the government considered that task to be vital for political stability both in terms of keeping farmers reasonably contented as well as for ensuring that food continued to be available. Secondly, there seems to have been a belief that the provision of credit for agricultural marketing on a non-permanent basis was in any case not unsafe and could not therefore seriously breach the programme of fiscal control which the authorities were conducting. It was rather thought that such credits would have less inflationary potential as the purchased crops were sold off fairly quickly, thereby enabling the marketing organisations to pay back the loans. With regard to lending to the farmers themselves, this will be discussed later when the directions of bank loans and priorities pursued by individual banks in their lending operations are dealt with.

As a result of the decline in the country's economic performance, coupled with other factors commercial bank lending declined in Zambia by 49.1 per cent, from K893.9 million in December 1977 to only K454 million in December 1978.³⁹ It was only with the adoption of new policies in 1985 that significant changes in credit levels occurred.⁴⁰ With those changes, commercial bank credits to the public and statutory boards at least shot up to K1,224.8 million by September 1985. K80 million of this figure was however provided by the Bank of Zambia to commercial banks for the purposes of lending to the parastatal sector.⁴¹ At the same time commercial bank holdings of treasury bills rose by K44.9 million to K551.2 million, nearly half of the ordinary commercial bank credit. This is an indication that government borrowing has once again began to dominate the lending scene despite promises to restructure the economy so as to put productive investment ahead of government budgetary requirements and deficit. Table 10 illustrates the yearly loans and advance totals from 1971 to 1985.

39 See Bank of Zambia Report and Statement of Accounts for the year ended December 31st, 1978, P.78.

40 See Chapter Four above.

41 Bank of Zambia, Quarterly and Statistical Review, Vol.17, No.3, September 1985.

TABLE 10

TOTAL LOANS AND ADVANCES TO THE PUBLIC SECTOR (K'000)

YEAR	TOTAL
1971	141,733
1972	157,808
1973	160,416
1974	270,377
1975	328,459
1976	324,730
1977	333,022
1978	301,590
1979	387,340
1980	431,576
1981	699,775
1982	747,719
1983	862,899
1984	1,029,280
1985	1,224,827

Source : Bank of Zambia, Quarterly Financial and Statistical Review, Vol.17, No.3, September 1985.

5:4. Determinants of Commercial Bank Lending to the Economy

The principal determinants of the lending choices and patterns of commercial banks in Zambia are not really different from those that influenced it before independence. Some of the determinants are:

5:4:1. The Demand Following Finance Doctrine

As seen in Chapter One the underlying theme of this doctrine is that the principal objective for setting up a bank is to ensure that it is a profitable business. Under this doctrine long term profitability is considered to be bad banking practice. For this reason a bank could not be established in the hope that it will attract business. In other words the attitude of British bankers, that banks should follow business, rather than the other way round, became the norm in post colonial banks.

During the colonial days the notion that banks would only be established where profitability was assured was easily fulfilled. As seen, the colonial relationship was basically one in which raw materials were collected or bought from the colonies and sold abroad. In return the colonies acted as markets for the metropolitan finished products. Such a relationship ensured that the business of banking flourished through the handling of the funds involved concerned and by making nominal loans to keep the relationship going. Side by side with the doctrine as depicted here, went the "real bills principle" whereby banks were made to consider self-liquidating loans as a model banking practice.⁴²

42 See G.O. Nwankwo, "Bank Lending in a Developing Economy : The Nigerian Experience", in Journal of African Law [1975] P.87.

The survival of these two doctrines into present day banking has created certain undesirable consequences. Some of them are that rural areas which are considered to be of no valuable business prospect are under-represented in terms of branches. Secondly, there has been scarcely any contact with the local people as they continue to be viewed as an unnecessary business risk.

Other consequences are the introduction of pre-determined perceptions about the role of the local people. With regard to their role, the general notion that banks do not stimulate enterprise and that they merely serve it, has tended to continue. Local people have continued to be viewed with the old racial stereotypes and prejudice in respect of their credit requirements. Thus even though the degree of entrepreneurship has been generally low amongst the indigenous people, not much effort has been expended by local banks to improve it or to understand their requirements without sacrificing business prudence and profits. As a result of such perceptions even those people who possess capacity to manage loans properly and generate profits are denied the opportunity to do so.

Finally the continuation of the doctrine seems to be due to the fact that the ownership of most banks and the training and social affiliation of those who run them continue to come from the same source or sources.

5:4:2. Legislative and Administrative Regulations

Soon after realising that the 1968 and other reforms had been ineffective in directing the flow of loans in accordance with the government's specifications, the authorities decided to introduce further regulations. As seen in Chapter Three from the early 1970s onwards almost all the new regulations and controls by the Bank of Zambia were wholly dictated by the twists and turns in the declining economy; including sometimes the conditions of international lenders like the IMF. The principal aims of all controls were basically three, viz, to slow down inflation, trim the balance of payments problem and finance the government deficit through accelerated borrowing from the banks. With regard to this last objective it is important to note that even the exercise of administrative controls could not produce adequate levels of funds to meet the government's requirements. This can be seen from the extra lending that the Bank of Zambia had to make.⁴³ All in all most of the controls used one weapon; the control of credit.

5:4:2. (a) A.D. Circular No.29, 1972

The first significant measures appeared on 8th January 1972. These were in fact the nearest thing to the legal 'teething' or implementation of President Kaunda's instructions

⁴³ See Michael M. Bell, *supra*.

in 1968 to restrict lending to non-Zambians.⁴⁴ Overall however, they affected the practice of acquiring loans for use in obtaining foreign exchange. The authorities it would seem saw this as an unjustified way of doing business without a corresponding input in investment.⁴⁵ Another notable aspect was that the regulations applied to Zambians and Non-Zambians more or less in the same way.

5:4:2. (b) The June 1972 Regulations

These directed that:⁴⁶

(a) from 1st July 1972, the minimum reserve requirements which all commercial banks were required to hold became 12 per cent of their demand deposits and 8 per cent of time deposits, instead of the previous rates of 8 and 3, respectively,

(b) from 1st July 1972, all commercial banks were required to raise their holdings of minimum liquid assets from 25 per cent to 28 per cent of total liabilities.

44 See Chapter Four, P.183.

45 During the 1986-87 auctioning of foreign exchange lending in this was seen as a device by commercial banks to earn more profits from interest payments, as the higher the loans they made the higher the bids their clients made. It therefore had the undesirable effect of raising the rate of exchange. See Zambia Daily Mail, July 23, 1986 "Forex Loophole Sealed", P.1

46 Bank of Zambia Quarterly Statistical Review, Vol.2, No.2, June 1972, P.9.

(c) the percentage of liquid assets which could be held by each bank in the form of bills of exchange and promissory notes eligible for discount at the Bank of Zambia was not allowed to exceed 20 per cent after June 30th and 10 per cent by 31st July. Previously there was no limit on the amount of such bills.

(d) all locally registered stocks issued by the government of Zambia, irrespective of maturity date were required to be counted as liquid assets. Before only securities with a final maturity of six years or less could be counted as liquid assets.⁴⁷

With respect to this last regulation, its effect was to increase the volume of commercial bank liquidity without a corresponding increase in lending. With only one buyer for their stocks; the Bank of Zambia, the ability of commercial banks to turn stock liquidity into cash liquidity for lending was severely limited. As seen already, the banks were also liable to heavy losses by selling longer dated assets before maturity, as the Bank of Zambia enjoyed wide discretion in fixing discount and buying rates.

In addition to the foregoing measures, the Bank of Zambia also ensured that balances held with overseas banks were not treated as part of commercial banks' liquid assets in accordance with Section 21(3) of the Banking Act. By way of

⁴⁷ See Chapter Three, note 65.

omission that provision effectively declassified those balances, other than items in transit, from being part of the minimum liquidity requirement or any other form of liquidity. Before this change, Section 21(4) of the Banking Act, 1964 permitted banks to consider overseas balances as part of the liquidity requirement or loanable liquid assets. With this new change commercial banks could no longer divert some of it for their local lending requirements.

It is not clear why the government took this measure, It would only seem that it was aimed at removing the ability of banks to externalise profits by purporting that they were repaying loans which had been made with such foreign based assets. It must also have been felt that, if balances with overseas banks continued to be treated as part of the overall liquidity, then banks could claim that they were entitled to keep them up to date for that purpose alone or in accordance with the terms of the minimum liquidity requirements of the Banking Act. Either way such a situation would involve the country's foreign exchange earnings and reserves being further eroded.

5:4:2. (c) The Creation of a Pipeline

In 1978 it was directed that all the funds which were in transit to overseas claimants, be they exporters, individuals or governments were to be placed in a special deposit at the Bank of Zambia, as opposed to staying in the premises of the commercial banks responsible for handling them.⁴⁸ This measure was aimed both at mopping up some of the excessive liquidity that had developed in the banks and at preventing commercial banks from using them for business purposes, namely, lending.

5:4:3. International Agreements

Towards the end of 1978 a package of much tighter monetary and credit controls was introduced as a result of the Zambia/IMF programme, whereby the latter agreed to provide a standby facility to help the country's budgetary and balance of payments requirements. These controls were also considered to be a necessary complementary factor to fiscal policy in restoring growth in the domestic economy. Some of them included the strict enforcement of a new 100 per cent special deposit requirement on all allocations of foreign exchange. This sealed a loophole by which some enterprises conducted

⁴⁸ See Bank of Zambia Report and Statement for the year ended December 31st, 1976, op. cit.

their import or export deals using borrowed money from commercial banks to pay for the foreign exchange necessary for such transactions.⁴⁹ Another measure which was designed especially to promote a more active mobilisation of domestic savings dealt with the upward adjustment of the deposit and lending rates.⁵⁰ In addition another measure requiring banks to provide information on all loans exceeding K500,000 was introduced. Quantitative quarterly ceilings were also placed.

These strict credit policies and measures led some enterprises to run down their deposits with commercial banks to finance their operations. Their introduction once again suggests that some banks were ignoring earlier regulations. The only consolation is that the figure of K500,000 mentioned in the last paragraph is not a small one. This could be an indication that banks were free to make credits at lower levels to the extent they liked. The important issue in the next sections will therefore be to establish how they channelled their loans.

In spite of the expiry in 1980 of the two year standby arrangement with the IMF, the authorities continued to pursue monetary and credit policies aimed at restraining excessive demand conditions in the economy. These restrictions received a new impetus in 1981 when the government announced a new policy

49 Bank of Zambia Report and Statement, 1978, op.cit., P.81.

50 The Maximum lending rate came to 12 per cent, see Bank of Zambia Report, 1978, Ibid.

to reduce its budget deficits and borrowing. The objective of the government was to pursue a stricter control of its recurrent expenditure as well as reducing subsidies. It further sought to strengthen the financial performance of parastatal companies by ensuring that they adopted realistic or economic prices and incomes policies.⁵¹ Accordingly, private sector credits in 1980 barely increased. Though it rose sharply by over 50 per cent in 1981, this was merely due to the increased demands of the co-operative unions and NAMBOARD to pay for a bumper crop harvest of that year. By this time the mines had also begun to look to the local banks for some of their cash requirements, as the low copper earnings which made their recovery uncertain discouraged outside lenders.

A further impetus to the general trend of restrictions occurred in May of the same year when a new agreement with the IMF was reached to extend the facility it had been giving to the government since 1975. The objectives of the new programme were to provide sustainable growth while progressively improving the balance of payments situation. Specific objectives were:⁵²

(a) to maintain average copper production at 600,000 tons a year;

51 See Republic of Zambia, Financial Report, February 1983 (Lusaka, Bank of Zambia), P.11.

52 Ibid, P.15.

(b) to increase agricultural production for home consumption and export;

(c) to improve the financial performance of parastatal enterprises;

(d) to balance external payments and reduce budget deficits to tolerable levels over the three years; and

(e) to reduce payments arrears progressively.

Ceilings were imposed on private and government borrowing from the Banking system, as well as on the Bank of Zambia's lending to the mining companies. Private sector borrowing fell by 6 per cent in 1982 from the 1981 levels.⁵³ Other measures affected imports. From May 1981, imports were required to be financed by documentary letters of credit, instead of direct payments of cash in foreign exchange. Each letter of credit required special approval by the Bank of Zambia. The only other authorised mode of payment was through bills of exchange or suppliers' lines of credit.⁵⁴ Of those authorised import volumes and modes of credit, 30 per cent was reserved for imports of essential commodities.⁵⁵

53 op.cit., P.11.

54 op.cit., P.14.

55 Soaps and detergents, edible fats and cooking oil, salt, dairy products, maize and stock feeds, paraffin and petroleum products, medicines and drugs, rice, fertiliser, toilet paper, matches, candles and baby foods.

5:4:4. The 1985 Measures

By the middle of 1985 the country's economic situation had become so precarious that the government felt it had no choice but to introduce more fundamental policy reforms aimed at arresting the negative trends and creating conditions for economic recovery. Thus using its widened powers under the Bank of Zambia Act, 1985, the Bank of Zambia introduced a new system of auctioning foreign exchange from 3rd September 1985.⁵⁶ It also moved to strengthen the treasury bills market. The maturity date on all treasury bills was to be strictly 90 days. The interest on loans was to be determined entirely by market forces instead of the Bank of Zambia as was the case before. Apart from the Bank of Zambia and commercial banks, members of the public and/or companies were also allowed to participate in the purchasing and selling of treasury bills through their banks.

The authorities also removed controls on domestic interest rates.⁵⁷ Thus, with effect from 3rd September again, commercial banks were given the freedom to fix their own deposit and lending rates which were to be based on their respective liquidity situations. The introduction of these new measures was seen as a way of shifting emphasis from a monetary

56 Bank of Zambia, Quarterly Financial and Statistical Review, Vol.17, No.3, September 1985, P.7.

57 Ibid. See also Chapters Three and Four.

policy of aggregate credit ceilings to a method of controlling money supply through the amount of reserve money made available to the economy. In other words the use of open market operations came to be seen as a much more effective way of allowing the Bank of Zambia to exert pressure and control over commercial banks and their reserves; and therefore of achieving a monetary expansion which was compatible with the prevailing economic situation.

Although significant rises in lending occurred, the government continued to be the biggest beneficiary. The effect of the treasury bill market has been to serve as a facility for financing an ever growing government deficit. It has also limited the growth in quickly convertible liquid reserves of the banks thereby restricting the intended credit expansion.

5:5. The Main Features of Commercial Bank Lending in Zambia

Having examined the volume of and certain determinants of the credit flow in pre and post independence Zambia, including the use of statutory and administrative powers to attain fiscal control of the credit situation, it is now time to highlight some of the leading features of that credit. In doing so, the main focus or primary objective is to demonstrate whether the flow of credit in the country conforms to such national aspirations as rapid industrialization, improving agricultural production and small scale manufacturing as well

as improving the overall living standards of the people. Unfortunately one of the principal handicaps in this exercise is that the data available is in certain respects inadequate. The lending patterns of Zambian banks reveal certain tendencies which are hard to reconcile with stated government policies and objectives. First there is a tendency to deemphasize the needs of the indigenous or small time borrowers. During federation this tendency was generally projected through the business choices of the banks which included the laying of stress on a limited function of supporting exports and imports. Such stress was in fact nothing less than a sign that the banks intended to continue being mere handlers of the vast sums of money that exchanged hands between traders. The only lending functions that occurred were temporary and were aimed at supporting the exports of raw materials and imports of finished goods. As they saw themselves chiefly as providers of a service to non-native clients, these banks also directed their services towards Southern Rhodesia where foreign owned enterprises and settlers provided a secure sources of business.

With regard to the post independence era, the Mulungushi and other reforms have shown that the colonial pattern has continued to apply. As can be seen from Table 11 below the proportion of loans going to agriculture and the personal sector, where most of the indigenous entrepreneurs are supposed to be represented has been rather low; coming fourth and sixth respectively after distribution (K157.5 million), manufacturing

(K105.7 million), mining and quarrying (K100.6 million) and other uses (K48.9 million), in March 1985. These big borrowers are seen as safe debtors because they are largely involved in export and import businesses which make their interests coincide perfectly well with those of the banks. Secondly some of them especially parastatals, are adequately protected by government guarantees and subsidies. It can only be reiterated that, in any case the seemingly healthy flow of credits to parastatals can not really be proof that government objectives are being satisfied as many of them are partly owned by foreign interests.

TABLE 11

TABLE 11.

COMMERCIAL BANKS - ADVANCES BY BORROWER GROUP
(K'000)

Private Sector

During the last week	Total	Agricul- ture	Mining and quarry- ing	Manu- facturing	Building and construc- tion	Distri- bution	Transport and commu- ication	Finan- cial institu- tions	Personal accounts (a)	Other (b)	Govern- ment (c)	Non- residents
1970	91.175	4.149	2.854	24.957	12.630	23.367	2.993	3.817	7.309	8.950	226	151
1971	139.466	16.280	13.309	27.334	14.059	32.755	4.061	5.390	10.106	10.468	5.697	7
1972	156.282	8.396	23.497	29.389	10.557	37.611	4.294	8.950	12.580	14.236	6.736	1.091
1973	140.479	8.468	23.114	25.872	5.184	36.873	5.597	10.555	9.762	12.582	1.832	1.056
1974	241.026	14.507	47.569	55.058	6.149	45.741	9.313	4.014	19.350	30.791	7.476	66
1975	293.873	9.887	83.223	59.746	6.297	56.044	14.820	14.264	23.006	22.006	3.677	25
1976	311.427	9.522	75.178	64.281	7.596	56.946	15.946	11.211	23.058	36.211	11.700	9
1977	319.510	12.178	78.851	53.382	6.417	50.683	18.345	11.490	30.390	25.990	28.675	
1977 Mar	304.911	10.376	74.987	57.572	3.746	46.943	14.497	13.220	33.165	39.910	9.202	1.293
June	314.667	18.599	80.391	59.360	4.274	31.149	14.281	7.122	30.517	39.976	27.920	1.078
Sept	305.159	13.304	78.490	45.731	6.323	44.669	15.771	12.837	25.955	30.285	31.756	38
Dec	319.510	12.178	78.851	53.382	6.417	50.683	18.345	14.490	30.490	25.990	28.675	9
1978 Mar	334.434	17.911	81.616	60.512	5.793	34.992	9.517	13.652	31.817	35.886	18.707	6
June	274.038	16.802	31.621	61.811	9.871	35.579	16.809	9.947	30.685	39.326	21.580	7
Sept	283.228	17.394	29.455	64.690	10.148	42.023	20.501	5.008	47.805	27.410	18.483	5
Dec	273.571	15.774	34.225	51.962	8.501	37.905	37.341	6.970	28.953	36.512	15.404	24
1979 Mar	298.272	19.680	40.042	58.836	7.930	50.429	23.282	9.239	43.048	33.899	11.881	6
June	280.455	17.678	16.784	62.296	6.587	40.993	18.482	13.061	57.937	42.247	4.338	15
Sept	264.480	15.960	23.187	58.690	6.799	55.521	14.171	10.676	25.448	48.437	5.272	319
Dec	415.363	34.880	34.880	64.781	12.393	66.425	24.592	16.976	32.860	69.767	76.774	2
1980 Mar	373.620	23.030	28.627	70.603	10.186	63.043	14.915	21.522	44.682	69.971	27.041	
June	330.499	26.837	28.843	74.551	10.390	61.061	16.494	16.333	32.737	95.247	7.866	140
Sept	363.169	32.440	44.173	69.434	14.286	66.994	19.416	19.551	38.565	50.281	7.611	418
Dec	354.296	23.924	40.981	67.466	9.771	19.177	14.353	39.089	71.754	11.372	147	
1981 Mar	382.060	28.676	58.392	60.859	12.887	55.603	15.664	22.304	42.045	63.370	20.745	1.512
June	493.255	54.628	70.451	72.804	16.041	85.195	29.450	20.522	48.841	82.685	11.905	736
Sept	498.687	67.329	86.774	56.640	8.688	81.999	29.960	21.370	37.076	93.790	15.005	56
1982 Mar	386.911	51.204	114.006	58.779	11.392	76.853	21.157	21.540	94.248	76.813	11.263	799
June	518.205	51.114	89.445	58.391	11.737	55.883	29.854	18.748	76.098	75.550	51.101	484
Sept	373.642	63.436	53.156	78.317	10.885	85.191	25.996	14.988	82.956	76.302	9.362	2
Dec	598.447	91.416	101.310	87.462	9.903	85.525	29.803	15.103	79.801	85.632	12.491	1
1983 Mar	384.865	40.658	44.386	52.716	5.805	66.046	16.097	6.080	73.924	68.742	9.036	1.376
June	404.754	50.744	75.926	90.339	9.376	64.870	15.293	20.141	13.935	41.787	21.348	995
Sept	607.334	64.992	76.188	81.173	7.385	94.423	29.648	17.621	87.215	139.050	9.686	23
Dec	600.058	78.939	77.685	91.942	9.799	91.774	26.800	25.029	22.558	137.782	37.750	
1984 Mar	580.332	67.256	75.963	94.871	9.994	94.772	28.283	23.178	83.066	81.727	18.898	2.324
June	534.035	63.423	93.477	100.307	14.065	98.043	29.333	21.987	16.664	79.683	17.053	
Sept	660.951	78.415	69.907	92.997	12.927	131.949	43.014	29.167	71.966	113.731	16.878	
Dec	754.979	88.645	74.047	127.235	13.722	172.044	54.108	22.428	35.216	147.042	18.192	2.300
1985 Mar	633.112	87.762	100.649	105.729	18.627	157.555	39.121	24.992	41.873	48.965	7.839	
June	647.162	87.250	33.102	92.248	16.054	154.792	37.773	17.490	55.845	122.856	27.274	2.478
Sept	727.309	95.317	93.686	121.740	16.976	192.578	10.085	27.596	33.815	69.182	57.901	426

Source: Bank of Zambia

(a) Personal accounts are obtained as a residue and therefore include errors and omissions from other sectors
 (b) Includes Services, water supply and sanitary services, electricity supply and distribution, and unallocated items
 (c) Including municipalities town management boards townships and other rural authorities.

In the case of the agricultural and personal sectors again, even though there have been some increases in the flow of loans this does not necessarily imply that there has been a major improvement in the share of indigenous entrepreneurs. The existence of certain conditions rules against such improvement. These are that indigenous entrepreneurs are not the only ones competing for loans in these sectors. The existence of government disquiet⁵⁸ over the levels of loans going to small scale farmers and artisans is evidence that commercial farmers and established expatriate businesses continue to be the chief beneficiaries. These groups also enjoy the advantage of being established traditional customers of commercial banks with extensive experience in business management and choices.

The fact that small scale entrepreneurs and farmers compete with large marketing organisations and cooperatives for the loans going to the agricultural sector also militates against the possibility of any fundamental changes in their share of receipts. Indeed the fact that the largest amounts of credit occurred during March, June and sometimes September of each year (despite some changes in recent years) is confirmation that the bulk of such loans went to the marketing rather than the production functions; as most marketing occurred during these months.

58 See Chapter One, note 5.

The second feature is that there has been an increase in public sector borrowing from the banking system. Some of this borrowing has been by the government itself to finance its deficit and balance of payments. Some of it goes to statutory boards which like parastatals are guaranteed borrowers which also received government subsidies.

It is perhaps not far fetched to suggest that there is a contradiction in arrangements which permit government borrowing by treasury bills but refuses long term lending. This is because even though treasury bills are short term instruments their redemptions usually consist of new issues of treasury bills. A similar point is made by Mr J.H. Frimpong-Ansah, one time Governor of the Bank of Ghana, when he contends that there is some thing drastically wrong with a banking system which refuses to give a loan to a customer who comes with a loan proposal for a small scale plan or rationalisation which will take four years to repay, but in which the same banks will happily renew overdrafts over the same period.⁵⁹ Clearly there should be some rationalization in this long standing practice apart from saying that it is an accepted norm. If all norms were to be unassailable then the world would have changed very little.

59 See "The Ghanaian Banking System and the Challenges of our Time", An Address at the Annual Dinner of the Local Centre of the Institute of Bankers, on August 29, 1970. The Bank of Ghana Quarterly Economic Bulletin, Vol.11, No.1, January - March 1970., P.14.

Another sector which has benefited well from commercial bank loans and advances is manufacturing. And rather surprisingly, the mining companies have also been relying more on the commercial banks for their requirements in recent years. As indicated earlier on, these companies are long term investors whose profits take years to create. Their requirements therefore posed a risk as far as commercial banks are concerned as they would affect their demand liabilities. Those considerations caused those companies to rely on their parent companies and outside sources for most of their requirements.

As stated in the preceding paragraph the recent rise in the levels of credit flowing to the mining companies from commercial banks can be attributed to the low copper prices and demand on the world markets which have forced these companies to be less profitable and therefore less creditworthy in the eyes of international lenders. Other reasons could be that the government's take-over of a 51 per cent state in the companies has caused their original parent companies to feel that it was no longer their duty as minority shareholders to pledge considerable resources in support of these companies' requirements. Given these circumstances these companies have no choice but to incur the rather stringent conditions of the local banks to meet their current long term investment and working capital requirement. The availability of support from a local shareholder (i.e. the government) could also have

hastened this change of focus to local sources. With regard to their requirements of new machinery and spare parts, here again the growing level of the Bank of Zambia's lending to the mines suggests that they can no longer organise foreign exchange on their own.

The role of the Bank of Zambia in providing short-term credit especially to the parastatal sector raises a few questions. Undoubtedly, the bank like any other central bank is entitled to exercise its lender of last resort privilege, but in giving money to commercial banks so that it can be lent out to parastatal companies on short-term basis, the bank has also been flouting one of the established canons of central banking, namely; that a central bank should not lend short-term as this is a function of commercial banks.⁶⁰

With regard to commercial bank lending to manufacturing, here again as in the case of the distribution sector and the mines, the fluctuations in the availability of foreign exchange are a very significant factor to the flow of credits. Shortfalls in the level of loans to this sector have usually occurred whenever it has become clear to the banks that repayments would be affected by defects in the ability of manufacturers to meet their high import needs due to shortages of foreign exchange.

⁶⁰ See G.D. Nwankwo, *supra* note 38.

The last feature about the credit situation in Zambia is the low levels that are provided. The main pointer to this situation is the never ending government criticism of the banks for failing to lend more money.

5:6. Sectoral Priorities of Individual Banks

As seen in Chapter Two only six commercial banks existed before 1984. These are the Barclays Bank (Zambia) Limited, The Standard Chartered Bank (Zambia) Limited, The Grindlays Bank (Zambia) Limited, The Zambian National Commercial Bank Limited, The Citibank (Zambia) Limited, and the Bank of Credit and Commerce. The rest of the banks were set up after 1984. Most of the later banks have not yet started to publish data on their sectoral choices for lending. However, even in the case of the older banks most of the data available does not go beyond 1984. In this section only the 1980 - 1985 data was examined.

5:6:1. The Standard Chartered Bank

In 1981 the total amount of advances made by this bank was K228,860,000. Of these K25,000,00 went to the treasury bills market. In 1982 total lending was K196.3 million with treasury bills taking K41.4 million. The proportion of lending to the government changed drastically between 1984 and 1985 when total lending was K224.7 million for 1984 and K232.0

million for 1985 with K27 million and K162 million going to treasury bills for 1984 and 1985 respectively.⁶¹

In terms of other sectors, agriculture has enjoyed a relatively large portion of the rest of the loans made since 1979. Between 1980 and 1983 the levels improved by over 7 per cent to reach 28 per cent of the bank's overall lending.⁶² More improvements appeared in 1984 when the level reached 38 per cent. Manufacturing and mining received 11 per cent and 10 per cent respectively during the same period, although fluctuations occurred occasionally. These impressive shares accruing to the agricultural sector, must, as said in section 5:5, not be considered in isolation from the known unequal system of distribution which favours the marketing instead of the productive sides of that sector.

5:6:2. The Barclays Bank

This bank's advances in 1981 amounted to K302.2 million. These increased to K312.8 million in 1982, and rose again in 1983 from K347 million to K364.8 million in 1984.⁶³

61 Standard Chartered Bank (Zambia) Limited, Annual Report, 1981, 1982, 1984 and 1985.

62 See Memorandum No.2, to the Board Advances Committee submitted to the Bank of Zambia.

63 Barclays Bank (Zambia) Limited, Reports and Accounts, 1981, 1982, 1983 and 1984.

Like the Standard Bank, this bank began to direct a significant proportion of its loans to the agricultural sector in the 1970s. In 1983 the bank spent almost 35 per cent of its loanable funds on this sector. This figure rose to 45 per cent in 1984. Mining and quarrying came second with manufacturing staying third.⁶⁴ Again as with the Standard Bank, it is important to remember that the bank's figures especially in respect of agriculture must be treated against the background of unequal allocations to the actual participants such as farmers and buyers/sellers of agricultural products. According to Frank Wilson⁶⁵ the bank's loans for agricultural production went largely to farmers who participated in government schemes on state land and to commercial farmers. The schemes involved ranged from the tobacco schemes which were run in association with the Tobacco Board of Zambia to the agricultural training schools and their graduates who became independent after going through them. These schemes attract the bank owing mainly to the proper management and organisational skills which they enjoy, the use of modern farming techniques and the support of clearly defined deeds and documents of title to the land.

64 Anthony Mulimbwa, Law and Agricultural Development in Zambia (Ph.D. Dissertation, University of London, 1987), P.390.

65 Frank A. Wilson, "The Role of the Non-Specialist Credit Agency - The Commercial Bank in Zambia", in Frank A Wilson and Victor A Amman (eds), Financing Rural Development : proceedings of the Eastern African Agricultural Society Conference, University of Zambia, Lusaka May 22-25 1974; (Kampala: Eastern African Agricultural Economic's Society and Makerere Institute of Social Research, Makerere University, March 1975, PP.77-80.

5:6:3. The Zambia National Commercial Bank

This bank's loans amounted to K131.3 million in 1979, K151.3 million in 1980, K170.1 million in 1981, K208 million in 1982, K261.1 million in 1983, K272.1 million in 1984 and K324.1 million in 1985 respectively. In 1985 treasury bills accounted for K72.5 million of the total lending; an increase of K30.5 million over the previous year. K9.0 million was invested in government stocks. This represented a fall from the previous year's K10.5 million.

Despite being a government bank the ZNCB has been giving priority in its non-government lending services to the manufacturing sector. The retail sector came second with agriculture trailing in the third place. According to Anthony Mulimbwa⁶⁶ the portion of the bank's lending going to agriculture though small, is supplemented by other, lending to such financial institutions as the Lima Bank which lend mainly to farmers. In 1984 such lending totalled K40 million.

66 Anthony Mulimbwa, op.cit.

5:6:4 The Grindlays Bank (Zambia) Limited

In 1982 this bank spent 13 per cent of its loans on the agricultural sector. The biggest proportion, (i.e. half) went to the mining and manufacturing sectors. The bank also showed a remarkable bias towards multinationals and other foreign owned companies. The other sector which fared well was retail. By 1984 manufacturing accounted for over 32 per cent of the bank's total lending with agriculture coming second for the first time with nearly 23 per cent. Mining took third place.⁶⁷

5:6:5 Citibank

This bank's total lending in 1984 amounted to K32 million. Of this amount the agricultural sector received 19 per cent. The biggest recipient was the mining sector which received 58 per cent. Manufacturing, distribution and retail shared 12 per cent.⁶⁸

67 Ibid, P.389.

68 See letter from Citibank to Director of Research Bank of Zambia, dated 15th January 1985. See also Citibank returns submitted to the Bank of Zambia.

5:6:6. The Bank of Credit and Commerce

The figures representing the total lending strength of this bank are not available. According to Anthony Mulimbwa,⁶⁹ the bank allocated 17 per cent of its total lending to agriculture. Its priority sectors however, were manufacturing, mining and quarrying. Building and construction also received higher proportions. By 1983 however, agriculture's share doubled to 31 per cent while manufacturing still remained first with 38 per cent. Mining, building and construction, distribution and other services shared the remaining proportion of the loans. In 1984 agriculture again received an improved share of 36 per cent elevating it to second place replacing building and construction and other sectors. Manufacturing still came first.

5:7. Conclusion

High demand for bank credit has been a common phenomenon since the early colonial days. The main problem however, has been that not much of it has been coming in adequate levels to meet local demand. During the time of Rhodesia and Nyasaland commercial banks concentrated their loans on the export and import trade in accordance with the prevailing business pattern so that Southern Rhodesia which had a high

69 Ibid. See also Zambanker, Vol.9 September/November 1983, p.3.

concentration of the federation's industries and settlers to enjoy the bulk of the credit flow.

Independence did not do much to reverse the trend in credit flow. Zambian entrepreneurs and individuals barely received any loans and advances while expatriates and foreign owned businesses benefited most. Although reforms were introduced in 1968 and again in 1970, the history of lending has continued to be one of unsatisfied demand. Despite legislative and administrative regulations, foreign businesses and persons still enjoy a substantial level of credit in the country. Indigenous people still display the same characteristics like the lack of business skills which place them at a disadvantage when considerations for giving credit are made.

The other determinants of the credit flow are the persistent shortages of foreign exchange due to poor copper sales. Such shortages of foreign exchange have introduced numerous problems such as the inability of enterprises to obtain raw materials which would keep them profitable and creditworthy. The other determinants are the continuing economic crisis which has shifted the attention of the authorities from development investment to the management of government debt, deficits and budgetary supplementation through borrowing from the banking system. The rest of financial resources are used to provide at least some of the basic social amenities and services in operation. In addition the

government's unprofitable regulation of the banking system and bilateral agreements with the IMF have further inhibited the flow of credits. The result has been that out of the banking system's total of K4.0 billion in assets and K3.6 billion in deposits only K1,224.8 million was lent out in 1985. But even that modest figure could not have been attained without extra lending by the Bank of Zambia.

The leading features of commercial bank lending in Zambia are therefore as follows:

(i) that only a very small proportion of the loans actually goes to indigenous people.

(ii) that there is heavy reliance on the banking system for public expenditure and other government services.

(iii) that only a limited group of sectors, mainly the mining, manufacturing, distribution dominate private borrowing. Although agriculture receives significant levels of credit, most of them go to the marketing organisations and commercial farmers.

(iv) that there is a growing tendency by the Bank of Zambia to supplement commercial banks.

(v) that in general the level of lending in the country is low.

CHAPTER SIX

AN APPRAISAL OF THE ROLE AND REGULATION OF COMMERCIAL BANKS IN ZAMBIA

6:0 Introduction

In Chapter Three we outlined the various statutory and administrative regulations and regulators that affect commercial banks in Zambia. Chapter Four, on the other hand, stated the government's objectives, including its view of what Zambian banks' functions should be.¹ Having discussed the actual role of banks in mobilising and allocating savings in Chapter Five, it is now time to evaluate the efficacy of that role and the effect of regulations and regulatory authorities in steering banks towards the attainment of the government's objectives and therefore, fulfilling our contention in Chapter One that regulations can enhance or retard the potential and distinctive role that banks can play in national development. First, a brief background to the Zambian regulations is given.

The Zambian government's objective for economic growth and development is to achieve a higher standard of living and increase employment by expanding agriculture, small scale manufacturing and entrepreneurship. This objective is enumerated in various policy documents and national development plans in the following terms :

1 See Chapter Four.

2 See Chapter Four.

(a) to diversify production so as to make the economy less dependent on a single export commodity; copper,

(b) to create labour intensive industries which would contribute significantly to the development of people's skills,

(c) to achieve self-sufficiency in consumer goods,

(d) to establish industries in rural areas, and

(e) to encourage the training of Zambian nationals as managers and technicians.

On the role of banks in attaining these goals, the government's policy has been that those institutions should play a key role in providing financial resources for investment and entrepreneurial activities by Zambians. Indeed initially, the government had intended that all investment, including capital resources should come from private sources. The government was to be involved only when private sources were unavailable or when it was impossible for private sources to embark upon the kind of investment envisaged.³ The Mulungushi Reforms of 1968 which were introduced after it had been realised that the response of private investors and financial institutions to the government's plans was luke warm made a slight variation to that government policy. Under the reforms, the government's instructions were that the banks should use their resources to help Zambians to set up in business.⁴

3 See Report of the UN/ECA/FAO, "Economic Survey Mission on Economic Development of Zambia" (Ndola: Falcon Press, 1964).

4 Chapter Four.

They were also encouraged to set up in rural areas and to help Zambians attain management positions. During the 1970 reforms, the government added that it was the duty of the banks to identify with the country's aspirations. Although the ultimate mode of identification vis, the takeover of 51 per cent interest in the banks failed to materialise, other measures were introduced to facilitate this purpose. These included the passing of the Banking Act, 1971 which provided that:⁵

(a) only locally incorporated and registered companies are entitled to carry on the business of banking in the country,

(b) only banks whose boards consist, at least in half, of Zambian citizens or established residents will be allowed to carry on in business,

(c) all registered commercial banks can carry on the business of merchant banking,

(d) every bank in which the government holds all or some of the shares is required to maintain a paid up equity capital amounting to not less than K500,000.

(e) every bank without government participation is required to maintain a paid up equity capital amounting to not less than K2 million.

5 Section 4.

In addition the government has persistently issued political overtures and incentives urging all persons in Zambia to love one another and work together for the prosperity of the country.⁶ It has also reformed the land tenure system and other laws concerning collateral security with the aim of promoting a safe system of lending. The only measure which can be considered rather discriminatory was the one placing restrictions on the borrowing of non-Zambians.⁷

Unfortunately despite all the measures and overtures made by the Zambian government, dissatisfaction with the level of commitment by commercial banks to the country's objectives continues to exist.⁸ As seen in Chapter Five a series of factors, many of them independent of the banks, have combined to determine the extent of commercial bank lending to the economy. Some of those factors are:

6 See Anthony Martin, Minding Their Own Business, (London : Hutchinson, 1972), P.81. See also K.D. Kaunda, Humanism in Zambia and a Guide to its Implimentation Parts 1 and 2 (Lusaka, ZIS , Government Printer).

7 See Zambia's Economic Revolution, An Address by President Kaunda at Mulungushi, 19th April 1968, (Lusaka : ZIS, Government Printer).

8 See "Cheap Loans Needed", Mulondwe Muzanga, Minister of State for Commerce and Industry says commercial banks should arrange concessionary rates of interest for small businesses. Times of Zambia, 3 July 1986. See also Mbambo Siyanga; Minister of State for Legal Affairs in Times of Zambia, March 25, 1986.

(a) the shortage of foreign exchange. This has come about as a result of a poor demand and price for copper on the world markets. This coupled with mismanagement have created a severe economic crisis in the country which is now characterised by a huge public debt, an enormous balance of payments problem, a budgetary problem and other government deficits crisis.

(b) the international bilateral agreements with the IMF which limit the level of lending to the private sector.

(c) the inherited business principles and attitudes which discriminate against rural areas and indigenous persons.

(d) the legislative and administrative regulations which continue to introduce inhibitive requirements, and fail to set or reinforce appropriate inducements and standards for banks to meet.

In the sections that follow below the legislative and administrative regulation of Zambia's banks are examined to establish why their role is creating dissatisfaction with the performance of commercial banks in the country. In particular, the discussion will look at existing banking principles and methods of doing business with a view to establish their appropriateness for achieving government objectives. Then the regulations themselves will be examined to establish their appropriateness. The first to be examined will be the Banking

Act's provisions relating to the formation of commercial banks and control of foreign interests in them.

6:1. Regulation of the Formation and Foreign Control of Commercial Banks

The principal sources of authority for the formation of banks in Zambia are now sections 4 and 18 of the Banking Act, 1971. Section 4 provides for incorporation, registration and management of Banks. Section 18, on the other hand deals with capitalisation. As seen in Chapter Two, nearly all but two of Zambia's commercial banks are foreign owned with a wide ranging supranational structure. Some of them are continuations of old colonial banks which dominated banking business in the whole region before today's nation states came into being. Many others are subsidiaries of powerful international banks which operate world wide networks.

6:1:1. Some Implications of Foreign Ownership and Control of The Banking System

During the reforms, the government saw the extensive connections between Zambian banks and foreign banks as a principal cause of the banks' unwillingness to identify with the country's objectives. In other words, it was felt that by reducing such foreign ownership of Zambian banks and introducing a bigger Zambian stake in their holdings, those

banks would automatically assume a much more sympathetic posture towards Zambians and Zambian aspirations. It was because of the failure to attain that ideal by means of a 51 per cent acquisition of shares in foreign owned banks that the Banking Act, 1971 was introduced. With it also came the demonstrations of disillusionment with the banks, and also new policies to exert control on them. Thus in addition to the changes introduced by sections 4 and 18, the Act also removed the right of Zambian banks to treat balances and other assets held with their parent companies or any other banks abroad as part of the liquidity ratio requirements. As stated in Chapter Five, the adoption of that measure appears to have been predicated on the need to prevent further outflows of the country's foreign exchange for the purposes of keeping such balances in credit. Another motivation for removing that right appears to have been a suspicion that balances with overseas banks were being used by such outside banks as a mechanism to manipulate the credit policies of Zambian banks. In other words, as such balances could be treated as part of the overall liquidity level or statutory liquidity ratio requirements, it was felt that overseas banks could use them to control the outflow of credit by moving them up and down in accordance with their own plans and considerations. The possession of such power in the past could have enabled them to determine not only what portion of the resources could be loaned out, but also the pace and direction of the country's overall development. The abolition of the right to treat overseas balances as part of

the liquidity level or ratio therefore means that Zambian banks can hold funds abroad as working balances only but not for portfolio optimization.

The ownership and control of Zambian banks by foreign companies also presented a potential for keeping resources abroad in countries which are already rich in resources at the expense of a desperate local economy. Usually when funds are kept in overseas deposits they get loaned out to other countries; thereby depriving the country of their origin of vital capital for its own development. The practice was not uncommon during the colonial era. That it is still perpetrated even today has been confirmed by large outflows of funds before the Mulungushi reforms. R.M. Harvey's assertions that Zambia has been a big time lender by reason of a large outflow of profits and other funds to overseas accounts also confirms this point.¹⁰

Another way in which foreign ownership of the majority of the country's banks tends to thwart the government's objectives is through the introduction of certain business principles and attitudes. Some of the principles are :-

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- 9 As far back as 1934, Report of the Ceylon Banking Commission gave a particularly well documented description of this practice. See Ceylon Sessional Paper XXII of 1934; also cited by W.T. Newlyn and D.C. Rown, Money and Banking in British Colonial Africa, (Oxford : Oxford University Press, 1954), P.76.
- 10 C.R.M. Harvey, financial constraints on Zambian Development in Charles Elliot (Ed) Constraints on the Economic Development of Zambia (London : Oxford University Press, 1971), P.26.

(i) the theory that banks should only maintain profitable branches or operate in places where business prospects are assured.

(ii) that banks should avoid small accounts which are administratively cumbersome and expensive.

(iii) that bank loans should always be secured and self-liquidating.

These principles constitute what in economic terms are generally known as the "demand following finance" and the "real bills" "or commercial loan" doctrines. The first doctrine opposes the establishment of banks where the business climate is so uncertain that profits are not assured. The second discourages long-term lending and sometimes medium-term lending, particularly on mortgages which entail a potential acquisition of immovable properties.¹¹ It also opposes the making of loans where ability to repay is doubtful or conditional rather than certain.¹² In reality this principle has been applied selectively to deny credit to subsistence farmers, small scale entrepreneurs and other persons who are unable to submit traditional securities like developed lands with deeds of title or life policies and other modern items and

11 See Margaret Rodgers and A.N. Allott, Introduction and Report of Proceedings, International Conference in Banking Law and Development in Africa, 19 Journal of African Law [1975] P.3.

12 As will be seen later, it is not argued that these principles are entirely wrong.

appliances.¹³ Before examining the success of the Zambian government's efforts and measures attempting to change the attitudes and practices of commercial banks it is important to discuss some of the factors that reinforce such practices.

6:1:2. Other Causes of Demand Following Finance and Other Doctrines

Many years have passed since the Zambian's attainment of political independence, and passing of economic reforms and controls. The effects of imported principles and doctrines are nevertheless still in evidence. It can however be argued that in view of the length of the period from independence, coupled with the fact that some significant shifts in banking practices elsewhere have occurred involving, for instance, a move from reliance on the balance sheet to considerations of potential cashflows,¹⁴ attitudes of Zambian banks should now be considered an internal matter. This argument is reinforced by the fact that many other factors which are typically local are also at play. Aside from those outlined in Chapter Five,¹⁵ others are :

13 A.N. Allott, "Credit and the Law in Africa : A Special Study of some Legal Aspects of Economic Development", in 19 Journal of African Law [1975] 73 at P.78.

14 See Jack Ravell, Solvency and Regulation of Banks (Bangor Occasional Papers in Economics, No.5, University of Wales Press, 1975), P.21.

15 See P.230 See also P.262 above.

6:1:3. Absence of Contact with Local People

As has been shown in Chapter Four, there has been a history of hostility or unwillingness on the part of most bankers to engage in intimate social contact with local people. Fixed attitudes persist about their business acumen. Expatriate bankers have always considered them as sources of risk. No attempt was made to locate or understand their requirements for a long time. Even when some measures were taken in the 1970s and 80s these were limited to a few secure schemes set up by the government and big parastatal companies.¹⁶ The result was that only a few of those who possessed the capacity to utilise bank funds profitably were offered the opportunity to do so.

6:1:4. Absence of Sufficient Entrepreneurial Spirit and Ability

While the attitudes and principles followed by the expatriate bankers and the Zambians they trained were responsible for the low levels of lending to the indigenous peoples, the low entrepreneurial experience of those people also played a major part. It is significant to note in this regard that by and large most Zambians are still engaged in a subsistence way of life and production. Those of them who have attempted to go into the commercial field generally operate small grocery shops, butcheries or market stalls which they run

¹⁶ See Chapter Five, P251.

in the most unsophisticated manner. As Godwin Mwangilwa observes about Zambian business :

"Fearing the consequences of a family business, the Zambian entrepreneur finds himself wrapped up in a European-type of enterprise in which he trusts absolutely nobody. Typical of this narrow minded business philosophy is one Lusaka grocery which opens when the proprietor or his wife are around. If they wish to go away they close the shop". 17

At the same time there are many other qualities of indigenous life which are not compatible with serious banking. These are :

(i) the poor command of modern commercial methods by many local people.

(ii) poor organisational abilities and support.

(iii) the infusion of business ventures with superstition and secrecy.

(iv) inability to keep records.

In addition, Zambian entrepreneurs like most Africans are handicapped by the bonds of their extended and largely dependent families. Some of the businessmen in fact owe their success to the contributions of the family members in the

17 Zambian Small Business; Debit, Credit, Broke? Enterprise Magazine, December 1973, P.30.

past.¹⁸ But in business these bonds are usually obstructive. They cause profits to be spirited away unnecessarily and encourage exploitative and destructive tendencies as family members help themselves to some of the goods, backed by the African creed "my brother's property is mine".¹⁹

The result of these short comings is that the requirements of most Zambian entrepreneurs are unattractive to bankers. And as their businesses are fragile and requirements modest, they also tend to be administratively costly to deal with as far as the banks are concerned. The only cost effective way of serving them would be by way of charging them correspondingly higher rates of interest and handling. These rates on the other hand have until 1985, not been within the power of the banks to set.²⁰ In any case the employment of higher rates as a vehicle for defraying costs is a politically

18 See Stanslave Andrenski, "The African Predicament" A Study in the pathology of modernisation (London : Michael Joseph 1968), P.102. See also Ronald Wraith and Edgar Simpkins, "Corruption in Developing Countries": including Britain until the 1890s (London : George Allen and Unwin Ltd, 1963), p.46 and Shankar Archaya, "Perspectives and Problems of Development in sub-Saharan Africa"; World Development, Vol.9, P.127 and E. Wayne Nafzinger, "The Effect of the Nigerian Extended Family on Entrepreneurial Activity", 18 Economic Development and Cultural Change, 1969-70. P.25 at P.30.

19 Godwin Mwangilwa, op.cit. cf. E. Wayne Nafzinger, "The Effect of the Nigerian Extended Family on Entrepreneurship Activity. Ibid.

20 Only the Bank of Zambia, an institution which is vulnerable to political and other pressures or considerations, was by law empowered to set rates for the banks. This power was only suspended in 1985 following the introduction of the auction system and other changes in regulations. See Chapter Three .

sensitive matter as it would drive banking services further and further away from the reach of ordinary people. It would also not solve the problem of defaults and delays in redeeming loans.

One of the consequences of the high level of ignorance about the demands of modern commercial methods that afflicts the majority of potential Zambian borrowers is that they tend not to appreciate the negative affects of defaulting on repayment. Many misunderstand the essence or the concept of credit itself. Such people see loans as rewards or gifts. The experiences of the Credit Organisation of Zambia (COZ)²¹ are instructive on this aspect. Many of the people who received loans from that organisation treated them as political gifts to woo their votes or as benefits of independence which were never to be repaid. As a result, the organisation is believed to have lost between K20 and K30 million before it collapsed in 1970. As no steps were taken by the organisation or by the government to educate the masses to refrain from treating loans as gifts, bankers got the impression that defaulters were officially condoned. The fact that no sanctions have been taken to recover the money involved or to punish the culprits also reveals the toothlessness of the legal machinery as far as the bankers are concerned.²² They therefore continued in their

21 Discussed in Chapter Four, See P.175 . See also Stephen A. Quick, Humanism or Technocracy? Zambia's Farming Co-operatives 1965-1972, University of Zambia Institute for African Studies. Zambian Papers No.12, P.49.

22 This point is also discussed below, see section 6:1:6.

cautious and reluctant way of dealing with potential Zambian borrowers.

6:1:5. The Absence of Amenities and Development Incentives in Rural Areas

Another factor which has aided the entrenchment of the imported business principles, doctrines and attitudes connected therewith in Zambia is the absence of social amenities and other infrastructure in rural areas. So far the only amenities that have been promoted are communications networks, basic educational and health amenities. In view of this only a few businesses have been able or willing to set up in rural areas. For the banks, as long as the rural areas remain without adequate inducements in the form of existing industries or government incentives to attract them, there will always be an appropriate excuse for not setting up there on the grounds that doing so would be unprofitable.²³

6:1:6. The Absence of a Secure Legal Machinery

The absence of guaranteed repayments of loans is again another factor which has, until now aided the banks' attitude

23 See Kaye Turner and J.M. Mulwila, "Small Scale Industrial Development and the Law", African Social Research, 1982 No.33, pp.141-73 at p.153. See also D.A. Ailola, Foreign Investment : The Law and Policy in Zambia (LL.M. Dissertation, University of Zambia, 1983), P.98.

that it would be unprofitable to operate in certain areas or to lend to certain categories of people in the country.²⁴ Again, the case of the Credit Organisation of Zambia is instructive. Thus, in so far as it makes the recouping of profits doubtful, the state of the legal regime has also contributed to the entrenchment of foreign doctrines in the country.

6:2. Demand Following Finance and other Doctrines in Practice:
At Independence and After

To see how foreign principles and doctrines influence banking policy in Zambia, despite many years of independence, and an increase in the number of Zambian managers, it is important to examine some of the activities of the government's own bank - the Zambian National Commercial Bank (ZNCB).

When it was created, the ZNCB was expected to expand its branch network on a much wider basis than that of the other banks. It was also promised that while the bank was to be allowed to observe important banking and business principles and aim for profits and efficiency, it would nevertheless be encouraged to undertake certain social tasks, including setting up branches in rural areas and promoting development by lending to small scale entrepreneurs and farmers. It was anticipated that the bank would be able to off-set losses by subsidising uneconomical branches with profits made in other branches.

24 See Note 22 above.

Most importantly, the introduction of the bank was seen as a channel for monetarization of the whole country and especially of the rural people and economy which were largely dependent on subsistence forms of exchange like barter. It was intended to inculcate a banking habit in rural people which would lead to higher mobilization of resources and greater but healthy competition.²⁵ These tasks are widely viewed as vital if any development is to be achieved.²⁶

In seeking to achieve competition among the banks the government seems to have deviated from its humanistic and socialist paths into which it had sought to direct the country. Such a deviation can therefore be treated as an acceptance of the importance of competition in creating efficiency by optimising production and achieving consumer satisfaction through lower prices and better services. In a way it is an indication of a strategy by the government to find another way apart from legislation and fiscal controls, of controlling the banking industry. Such a strategy works by forcing the rest of the banks, under pressure of competition from a strong government bank, to employ similar ways of attracting business.

25 Before this competition among banks was largely avoided. The industry was practically oligopolistic in nature, with a number of mechanisms having been employed to reduce competition. See e.g. Chapter Two, P.54 regarding arrangements on interest and other business activities. See also P.275 below.

26 See Erick L. Furness, "The Significance of Money and Credit in a Developing Economy", in Money and Credit in Developing Africa (London and Nairobi : Heinmann Educational Books, 1975), P.26.

In that way some of the government's objectives stand a bigger chance of being satisfied.

Before the creation of the ZNCB, competition among banks was minimal. Some of the strategies used to avoid it included a system of area demarcation between the various banks. Thus, once a bank set up in an area, usually a provincial or district centre, the rest of the banks tended to avoid introducing branches there to compete with it.²⁷ As a result of this practice the Barclays Bank alone served the Eastern, Luapula and North-Western provinces while the Northern and Western provinces went to the Standard Bank. The Grindlays Bank, on the other hand secured for itself quiet enjoyment of certain key farming towns like Mumbwa, Serenje and Mpika. Quite clearly the concept of competition did not have much impact under that arrangement.

The government's pretensions on competition however, were belied by some actions that were taken after the ZNCB was created. These were that the government itself decided to conduct all its commercial banking requirements with that bank only. The government also directed that parastatal companies which control 75 per cent of the economy must do the same. These activities obviously reduced the advantage which expatriate banks enjoyed before the ZNCB came into effect. At

27 Situmbeko Musokotwane, Financial Institutions and Economic Development in Zambia (Dissertation Zur er Languang des Akademischem Grades Eines Doktors de Wirstelhaf Suissenschaft and de universitat Konstanz, June 1985), P.45.

the same time however, they also have the effect of destroying the very competition they were meant to achieve. They do this by giving the ZNCB a near monopoly in business, leaving only 25 per cent of the economy to competition, in which the ZNCB is still free to participate.

On the matter of the bank's aims, which were carefully constructed to reflect government policy and objectives, it is also clear that only minimal success has occurred. Thus in the case of the need to expand both in terms of establishing more branches and allocating credits more widely, there can be no doubt that the ZNCB has done better than any other bank. From only one branch at the time of its inception in 1970, today it has 29 domestic branches and one external branch in London. Numerically, this compares favourably with the older banks like Barclays Bank (31 branches and 9 agencies), Standard Bank (23 branches and 11 agencies) and Grindlays Bank (7 branches).²⁸

But to really discover the betrayal of the original objective of the expansion programme, one must review the actual distribution of the bank's branches. Such a review demonstrates that in fact there is still a high concentration of branches in the urban and not the rural areas, as was promised. Thus, of the 29 branches that the bank currently runs, 7 are in Lusaka alone. The other 16 are scattered along the line of rail, with the heaviest presence being in the

²⁸ See Chapter Two.

copperbelt cities and towns. The remaining 8 are in provincial capitals. It is also significant to note that 14 branches (i.e. about 50 per cent of the total number of branches) are in fact concentrated in 4 towns only. This means that in reality the ZNCB is no more than a fast growing follower of the doctrine of demand following finance. Indeed as Musokotwane²⁹ argues, the fact that the bank established branches in towns where some expatriate banks are already operating is an indication that profitability is the motivating factor in the selection of branch sites.³⁰ In fact the opinion among most bankers is that there is still plenty of room for profitable operations in the traditional areas (i.e. urban areas). The entry of one bank is therefore not perceived as constituting a big enough threat or inducement for them to venture out into the rural areas with all their hazards like the lack of adequate social amenities. It can only be added that the absence of any drastic adjustments on the part of the old banks demonstrates that these banks are still firm in their belief that there is plenty of room in the urban areas and that a rush to the rural areas would be an unwarranted jeopardisation

29 Situmbeko Musokotwane, op.cit., P.46.

30 When the Minister of Finance was asked in parliament, why the bank was opening a branch in Mongu where there was already a branch of the Standard Bank rather than in Kalabo where there was no bank at all, he replied that profitability was the overwhelming consideration in the matter. 'See Debates of the 5th Session of the National Assembly, 1st - 8th August, 1978; also cited by Musokotwane Ibid. This shows that the bank's objective was like the other banks, profitability rather than the provision of a service.

of their profits. Furthermore the fact that none of the new banks has a rural branch as yet is an indication of the extent to which the doctrine of demand following finance is well entrenched. It also shows that the government's goal of changing the attitudes and terms of business through competition have not been very successful. For if there had been sufficient competition, some of the smaller and new banks would surely have sought to do business in a relatively free atmosphere until they had enough strength to compete against the well established banks.

Another factor which undermines the seemingly favourable position of the ZNCB is the tendency by many of the more independent state enterprises to keep accounts with foreign owned banks despite government pressure to desist from such acts. Even though many officials cite their reasons for doing this as being the pressure to avoid congestion at the State bank, it is clear that other considerations are also at play. These include occasional opportunities to secure foreign exchange whenever the reluctant parent companies relax their terms. They also include the well cultivated and now entrenched psychological belief that non-Zambian items and facilities are more prestigious and efficient.³¹ Some of the assumptions of local people are that the ZNCB as a state bank is

31 See Frederick Ssempembiwa's lines on the taste for luxuries and imports in, E.F. Ssempembwa, "Law in the context of Underdevelopment; A Comment on the Industrial Development Act, 1975-1977 Zambia Law Journal, P.56.

subject to various forms of pressure, including political manipulation. It has even been alleged that from time to time the bank makes questionable advances, mostly to political persons and causes.³² From all these facts and considerations the allocative efficiency of the ZNCB like that of other banks is clearly questionable. This means that the regulations that have been taken so far must be ineffective or insufficient.

6:3. Combating Demand Following Finance and other Principles

Some of the changes that must be induced are :

6:3:1. Improving Amenities and Facilities in Rural Areas

Until rural life is improved, it is unlikely that cost conscious institutions and banks will move there.³³ It is therefore imperative that the government should induce some improvements to social amenities in rural areas. Another consideration should be that, as nothing has been done to remove the class and status orientations of the workers and managers of the banks, their expectations in terms of living conditions must be met if they have to be lured into rural areas. Thus, what is needed is to speed up the building of roads, schools, police stations, health centres, businesses and other things necessary for the comfort of workers.

32 Private interview, Research Department; Bank of Zambia. See also J.M. Mulwila, Parastatal Companies and the Law in Zambia (Ph.D. Dissertation, University of London 1980) P.176.

33 See Situmbeko Musokotwane, op.cit.

6:3:2. Improving People's Business Skills

The absence of business understanding and knowledge has long been identified as one of the leading obstacles to the development of a proper relationship between banks and indigenous peoples in most developing countries.³⁴ It is therefore, important that the government should strive to achieve and spread a habit of savings amongst the rural people. But before this, it must seek to induce a culture of thrift and personal initiative. Without these improvements, banking expansion into rural areas cannot be justified as it is bound to fail due to the absence of an assured market. It is important in this respect to note as Shankan Acharya does, that some of the government's own policies and regulations are biased against emerging small scale entrepreneurs.³⁵ In particular, such policies and regulations as those seeking to achieve import controls are largely in favour of large established foreign firms, which leaves private individuals with paid employment as the only incentive.

34 See R.J. Bhatia and D.R. Khatkhate, "Financial Inter-mediation and Mobilisation and Entrepreneurial Development: The African Experience", 22 IMF Staff Papers (1975) 134
See also E. E. Jucker-fleetwood, Money and Finance in Africa (London : George Allen and Unwin Ltd., 1964), PP.34-36.

35 Shankan R. Acharya, Ibid, P.127.

6:3:3. Eliminating Public Misconception of Credit

In as much as the government should introduce a culture of thrift and personal initiative, so too must it inculcate a philosophy of honesty and respect for the institution of credit. As seen the treatment of credit as a political gift has worried both bankers and commentators. Stephen Quick attributed the failure of COZ and the co-operative movement as a whole to it.³⁶ J.K. Onoh has attacked it as a serious impediment to the development of banking.³⁷ As it is in the nation's interest that the allocation of savings by commercial banks should be diversified, it follows that it should equally be a national duty to ensure that the operations of the banks especially the lending aspect, should be properly understood. In various countries various methods may be used. In India, the creation of regional banks coupled with an educational task and simple methods of operation have produced good results.³⁸ In Tanzania, attempts have been made to fuse the functions of the national bank into the national programme of self-reliance and taking institutions to the people.³⁹ As far as Zambia is

36 Stephen Quick, Humanism or Technocracy? Supra note 21.

37 Money and Banking in Africa (London, Lagos and New York : Longhorn, 1982).

38 J.K. Mittal, "The Regional Rural Banks" The Law, It's Working and Suggested Reforms" 18-19 The Banaras Law Journal (Vol.1).

39 See H.H. Binhammer, Commercial Banking in Tanzania, Economic Research Bureau, University College Dar-Es-Salaam. Paper No.69, P.11. See also Ali Isaa Abdi, Commercial Banks and Economic Development, The Experience of Eastern Africa (New York and London : Praeger, 1977).

concerned, the absence of facilities in rural areas may hinder such wide spread use of the banking institutions themselves to educate the masses about their functions. Where possible, however, it should be the duty of these institutions to make their functions known and to include in that process certain basic information about the duties of the public in respect of loans. It is known that as competition increases, banks have tended to rely more on the media-radio, television and newspapers to advertise themselves. It is submitted that part of those programmes should involve education, such as on how to sign cheques, to open an account, to apply for a loan, and how to repay a loan etc.

On the part of the government the educational task should be easy and inexpensive as it can rely on existing facilities such as the Ministries of Guidance, Education and Culture, part of whose function is to preach responsible citizenship, humanism, law and order. In addition the task should be made easier by the cultural practices of most Zambians which associate honour with the keeping of promises as well as returning of borrowed things.

6:3:4. Strengthening Statutory Protection

As seen one of the principal obstacles to the expansion of lending which is also a major cause of existing attitudes towards lending to indigenous people is the weakness of

statutory sanctions against defaulters. Apart from those imposing terms of imprisonment, other sanctions include actions for breach of contract and foreclosure. All those sanctions are not without certain disadvantages. Many of them require the observance of intricate procedures which make them time consuming and therefore costly. In the case of imprisonment as will be seen later, the lender is still left with an unsatisfied debt.⁴⁰ Quite clearly what is required are cheap and convenient systems of ensuring repayment.

There is no universal consensus on what these cheap and convenient systems of repayment may be. Certain people argue that longer prison sentences will deter deliberate acts of default.⁴¹ Other people on the other hand feel that the authorities should guarantee the loans or create a system under which certain persons or institutions can do so.⁴² It is submitted here that despite the disadvantages in both, a combination of the two approaches is more beneficial. In addition, there should be a duty to improve the borrower's skills, including those relating to financial handling. Other provisions, relate to the individual characteristics of the Zambian mortgage, charge, and other securities, which will be discussed later.

40 See e.g. The Agriculture Credits Act below.

41 Private interview with Denis wood, 24th July 1986. See also Stephen Quick, op.cit. and C.R.M. Harvey, "Financial Constraints on Zambian Development", supra note 9.

42 Private interview with Denis Wood, Ibid. See also A. N. Allott, "Credit and the Law in Africa", supra note 14.

6:3:5. The Need to Change Bankers' Attitudes

As seen one of the usual criticisms against the doctrine of demand following finance is that it makes bankers indifferent and at times outright hostile to the needs of indigenous people. The banks raise the failure of the people concerned to produce the necessary securities for loans as their reasons for being cautious. Sometimes they also treat such people's lack of experience in banking and business as an additional source of risk.

According to Mr J.H. Frimpong-Ansah, a one time Governor of the Bank of Ghana, "when banks do these things, they are without knowing it admitting their own deficiencies, such as having inadequate knowledge of the credit standing and credit worthiness of their prospective customers".⁴³ In addition :

"In effect what our bankers say when they are confronted with their lack of dynamism is that "we want to lend safe, risk is none of our business". By these statements the banks are clearly admitting that they are incapable of helping their customers to work out sound projects and help them with credit supported by useful suggestions to grow".⁴⁴

43 "The Ghanaian Banking System and the Challenges of our Time" An Address at the Annual Dinner of the Local Centre of the Institute of Bankers on August 29 1970, in the Bank of Ghana Quarterly Economic Bulletin, Vol.11, No.2, January - March 1970, P.14. also cited in Chapter Five. See note 59, p.247

44 Ibid.

How, for instance, is a customer expected to have previous banking experience when he is put off at his first entry? What is needed is for the banks to keep a close contact with their customers so that they know their problems or progress. They should also supervise the credit to ensure that it is not only used for intended purposes but that they are up to date with any developments including changes that might need to be made.

Banks should also be prepared to incur some costs to carry out some socially desirable tasks of assisting their clients in formulating and evaluating their needs. In India, the Regional Rural Banks have excelled in this task by adopting simple and very open minded attitudes to their customers' requirements. Their branches are not only constructed in a way which allows for open and fearless access, but their employees are also instructed to go all out to assist their customers in their requirements. Their offices do not bear the usual barriers that are characteristic of most commercial banks, such as counters, locked gates, security guards and strict rules and procedures of operation. Employees on the other hand are instructed to sit with customers and help them in arriving at a realistic organisation and articulation of their requirements.⁴⁵ Zambian banks could surely do some of these things. They could for instance assist customers to acquire a degree of knowledge about accounting methods, book keeping and management skills⁴⁶.

⁴⁵ J.K. Mittal, op.cit.

⁴⁶ E.E. Jacker-Fleetwood, op.cit., P.147.

Admittedly, the Indian regional banks are state banks specifically established to support small scale enterprises in their regions. The important thing however, is that Zambian commercial banks like Indian banks operate in similar conditions involving mostly illiterate peasants without sufficient securities. They also share common objectives, namely, to be profitable. Being profitable while doing a public service is, in this regard, a more commendable function than merely ensuring that records are kept properly and loans recovered.

There is evidence that in Tanzania commercial banks have begun to offer some of the services referred to above to their customers with some encouraging success.⁴⁷ It is also significant to note that an experimental liaison between the Barclays Bank and a number of family schemes in Zambia, which the bank monitors closely has also produced a similar satisfactory result.⁴⁸ Apart from monitoring, the bank also assisted the settlers on those schemes in record keeping, accounting and avoiding waste by ensuring that the money is spent on the actual purpose for which it was borrowed. As the schemes are basically government controlled, with the government

47 See H.H. Binhammer, Commercial Banking in Tanzania, Economic Research, University College Dar-es-Salaam. Paper No.69. 11 PP.7-8.

48 Frank A Wilson, "The Role of the Non-Specialist Credit Agency : The Commercial Bank in Zambia" in Frank A Wilson and Victor A Amman (eds) Financing Rural Development; Proceedings of the Eastern African Agricultural Economics Society Conference, University of Zambia, Lusaka May 22-25 1974, (Kampala : Eastern African Agricultural Economics Society and Makerere Institute of Social Research, Makerere University, 1975).

supplying the plots of land to registered settlers, and other services like roads, milk and produce markets and other necessary amenities and implements, it can perhaps be said that these schemes offer the best example of how co-operation between the government and the banks can produce a mutually beneficial result.

Another important requirement is for the authorities to ensure that bankers direct their thinking away from the procurement of security and "foreclosure" in the event of default. For as Jaffer Hussein convincingly argues, it is not sufficient nowadays to consider it safe to have loans secured on assets only. Economic development funds have also to be directed into specific areas, according to some development strategy. As such, it becomes necessary for financial institutions to expand into cognate activities such as trust banking, equity financing, venture capital financing as well as factoring and forfeiting.⁴⁹ Ruth Weiss is even more succinct arguing that :

"It is the project and its viability which is of first importance. To simply liquidate a man's securities and take back a loan is bad business in the short and long term".⁵⁰

49 "Economic Development : The Way Ahead : Efficient Banking is a Must", Banking World, October 1984, P.31.

50 "Rationalisation" says UNIP, What Next for the Banks? Enterprise Magazine, December 1973, P.37. See also note 32, Chapter Three.

Thus, if new forms of productive activity and economic diversification are to take place, it should be the project and its viability which must command the highest consideration. Therefore, directing favourable consideration only to people who bring such items as insurance policies, houses Unburdened by mortgages and guarantees to support their impossible schemes should be treated as a bad banking practice. It amounts to pursuing collateral for its own sake. In such a situation where other considerations are not treated highly, foreclosure becomes the banks' principal weapon. This means that just because a bank has been presented with, say, a house, it will do nothing about monitoring the utilization of the loan. In most cases it is the bank which loses because the house may not even fetch an appropriate price. The bank may also have to spend more money in trying to sell the house than it would have done if it had assisted the borrower to wisely deal with his loan. Allott and Margaret Rogers make the same point saying :

"By insisting on title [to land] bankers are denying help to the majority of farmers in many African countries. In any case, the value of this method of securing a loan in some African countries may be called into question. The situation exists in many cases where it is virtually impossible to foreclose; or, when the banker does foreclose, he may have a nasty shock, as the market, being somewhat erratic, does not realise anywhere near the value set on the land". 51

51 Margaret Rogers and A.N. Allott, "Introduction and Report of Proceedings", International Conference on Banking and Development in Africa, 19 Journal of African Law, P.15; [To Land] added.

In addition a bank which places too much reliance on traditional securities of land and title nowadays may be unable to evict the debtor's spouse who may have an equitable charge on the estate.⁵² Where the spouse may have contributed towards the cost of acquiring the property concerned, or in the case of traditional or customary African family systems where many others may have an interest in the property, it may be impossible to foreclose.⁵³

Clearly rather than pursue security for its own sake banks should begin to consider ideas or projects. After all a bank's future profits should appropriately be tied up with its customers' future. Simply to liquidate a man's securities and take back the amount that was originally loaned out to him is bad business as it destroys the very fabric upon which potential future profits should be based.⁵⁴ In addition to the project itself other possible considerations should be the customer's ability to carry out the project, the marketability of his products and his own personal stake in the project.

52 E.R. Shaw and J.B. Hawcroft, Banking Law (Oxford : Basil Blackwell, 1985) PP.147-148. cf. English Matrimonial Homes Act, 1967 Section 1.

53 See Glyn's Bank v. Boland [1979] Ch.D.312, [1980] A.C. 489 and Williams and Glyn's Bank V. Brown [1980] 3 W.L.R. 138. cf. Section 70(1) (G) of the English Land Registration Act, 1925.

54 J. Milnes Holden. The Law and Practice of Banking, Vol.2, Securities for Banker's Advances, 6th ed. (London : Pitman 1980), P.14.

There should also be wider use of other debt collection methods such as stop-orders or assignments.⁵⁵ The now defunct Agricultural Finance Company (AFC) made great use of these with some success.⁵⁶ The company's stop-orders were addressed to NAMBOARD and the co-operative unions which are the main purchasers of produce in the country. These instruments obliged these organisations to pay directly into the farmer's debt account at the AFC, which was in turn obliged to return the remainder to the farmer after recouping its entitlements. Admittedly, this type of payment does not really constitute an absolute assignment, as loans will ordinarily have been made before the marketing boards enter into any transactions with the farmers, thereby making it impossible to determine the farmer's income.⁵⁷ There is however, no fear about enforceability as such transactions are good equitable assignments.⁵⁸

Other considerations can be reliance on character rather than actual security, giving implements instead of money, and post-ponement of repayments until crop harvests and purchases have been completed.⁵⁹ At present, some banks begin to demand

55 See R.R. Pennington, The Investor and the Law (London : MacGibbon and Jae, 1968). P.49.

56 A.C. Mulimbwa, op.cit., P.427.

57 Ibid.

58 See Hughes v Pump House Hotel Co. [1902] 2 K.B.190. See also M. Furmston, Cheshire and Fifoot's Law of Contract (London : Butterworth, 1976)., P.495.

59 These have recently been carried out in Uganda with some success. BBC Radio, Focus on Africa 1/8/1988.

repayment the month after the advance has been made.

Finally it is important to point out that the foregoing misgivings about too much reliance on security are not a unique phenomenon. The Wilson Committee recently said of the British banks' over-reliance on the tradition of securities that :

"It may also be noted that even their American and Japanese counterparts have voiced strong reservations about the British Banking tradition which looks mainly to assets as the security for the loan. The "going concern approach" which these American and Japanese banks have adopted on the other hand gives more emphasis to the borrower's ability to repay the loans out of future cash flows. Accordingly the lender under this approach tends to be less interested in taking charges over assets, but merely requires the borrowers to supply profit and cash flow forecasts; and to allow the banks to monitor their progress".⁶⁰

The American and Japanese banks also rely heavily on covenants in which outlines of the gearing, liquidity, interest and cover ratios of their customers are made and agreed.⁶¹ In the event of breach the banks have a number of options to follow, such as calling for security, making changes to the terms of the loan, or accelerating repayment. When more serious breaches have been committed, the banks may cancel the unused part of the facility.

60 Committee to Review the Functioning of the Financial Institutions, chaired by Sir H. Wilson. Progress Report On the Financing of Industry and Trade (London : Cmnd 7937, HMSO, 1980), P.16.

61 Ibid. See also Eynon Smart, "Lending, Secured and Unsecured " 2 Banking World No.1. P.52 at P.53.

Another method which is common in Germany and also in Japan is direct involvement in the borrower's business. In bigger sized ventures they can appoint a representative to the boards of directors. In ventures of a smaller size, they can enter into a working capital maintenance agreement with the undertaking's shareholders in which they covenant to ensure that certain ratios of non-borrowed money are maintained in return for further borrowing.⁶²

One important lesson from these new American, Japanese and German approaches is that lending and borrowing are a business based on mutual benefit of all the parties. It is in no-one's interest to place conditions that make it impossible for one or both of the parties to realise their objectives. As Jack Ravell asserts, "there is no such thing as a loan which is in itself self-liquidating". On the contrary, to liquidate a loan other activities must be facilitated to generate the money.⁶³ Thus, loans for seeds on harvesting may only be liquidated if there is a demand for the grain when it is harvested or gathered, and this demand will probably depend on the ability of the grain merchants in turn to borrow from the banks. This means that it is unrealistic to expect loans to be liquidated while refusing to assist the farmers or borrowers to apply the loans correctly, or to lend to buying agencies.

62 The Report of the Committee to Review the Functioning of Financial Institutions, op.cit.

63 Jack Ravell, *supra* note 4, P.13.

The other advantages are firstly that where banks are part of the venture, they will seldom turn their backs on it even if the borrower gets into difficulties. This therefore gives them a strong incentive to take action to rehabilitate the venture and to ensure that it is properly managed. Secondly these approaches mean that in the absence of prior floating charges on assets, other creditors have equal rights in liquidation so that a company's ability to borrow from other banks is not compromised.

6:4. Efficiency of Formational Regulations

Having examined the nature, role and causes of certain business principles applied by banks and the effect of government policy and control on them, it is now time to examine the efficiency of other regulations.

6:4:1. Regulations Relating to Ownership of Banks

As seen, despite government regulations requiring local incorporation and registration, the majority of Zambia's banks are still foreign owned. Secondly, there continue to exist many other channels by which foreign owners are able to avoid governmental controls of their businesses. For one thing the management of these businesses are still significantly foreign dominated. For another, even though Zambians have assumed certain management positions, their training and outlook is

largely foreign so that they fail to identify sufficiently with national objectives. Indeed it is worth while noting that at present a big row is going on about the recognition and admission of Zambian trained accountants to professional bodies dominated by foreign trained members.⁶⁴ The prevailing view is that only those who have done the Examinations of the British Institute of Bankers, or the Institute of a Chartered Accountants - also foreign controlled, should assume positions of influence. It is however doubtful whether those qualifications adequately prepare one for the kind of conditions that he or she will find in a backward country like Zambia, where there are no stock, and capital markets to analyse or adhere to. Indeed the fact that the same kind of securities, procedures, buildings and methods are insisted upon confirms that those people live in a world of their own and are totally controlled by their foreign employers.

Also not reflected by the changes in the relations of the Zambian based banks and their overseas parent companies are the latter's powers to make investment choices and decisions. Indeed one striking feature about the investment or capitalisation levels of Zambian banks in the aftermath of the introduction of section 18 of the Banking Act, 1971 is that they are generally small and almost uniform.⁶⁵ Admittedly, in

64 See The Zambian Daily Mail, 3rd July 1986.

65 See Chapter Two. Until recently the general pattern of investments involved not more than K2 to K5 million for most banks.

banking business share capital is of little significance as far as the lending aspect is concerned. What is important is each bank's ability or willingness to attract more funds by mobilising deposits and allocating them wisely and widely to people with potential to create wealth and profits. In this respect it is important to recognise that a bank's size and capital may go a long way to demonstrate its strategy on the twin issues of investment choice and conscious commitment to national aspirations. They may also determine a bank's mobilisation and allocative capabilities, again the two most important aspects of banking as far as a bank's role in development is concerned. In short, by specifically making it one of the principal subjects of its reforms and regulations, the government indicated that it considered the level of investment in capital to be a vital matter in so far as commercial banking is concerned.

There can be no doubt that most foreign owned banks involved are able to invest more money in their Zambian branches than the legal requirement. Many are big international banks with immense resources at their disposal. Their investments soon after the introduction of the latest legal limits, however, were not very impressive.⁶⁶ Their low level investments obviously show that the government's measures have not been able to deprive them of the decision making powers. It is also important to add, in fact that, by prescrib-

66 See Chapter Two.

ing a margin of investment, the government may have frightened these banks from investing more. It may also have strengthened their resolve to be cautious. Many of them therefore have been compelled to invest within or slightly above the statutory margin for fear that the statutory mandate is an indication that the government is intent on a course of continuous intervention in their affairs with policies and actions that they dislike. Although some somewhat bigger investments have begun to appear in recent years, there can be no doubt that these are mainly a reaction to the falling value of the Kwacha and rising rate of inflation, and not necessarily a sign of confidence in the government's policies or a change of heart on the part of the banks about their investment strategies.

Clearly, if the government's aim was to show displeasure at the low level of investment by the banks, what it needed was an incentive and not a compulsory figure. Alternatively, it should have stipulated that banks already operating in the country which had a certain amount of assets or profits must increase their level of capital accordingly by a certain percentage. Admittedly, this may not have worked well at the time as banks then had a right to repatriate all their profits. They would therefore, have been able to change the true state of their assets. But as the country's manpower resources and methods of investigation improved, these problems would have been halted. After all, there is no need to make swift changes if they will only lead to inefficiency or cannot be implemented.⁶⁷ In addition a proper use of the exchange

⁶⁷ Shankan R. Acharya, op.cit.

control regulations would also ensure that only legitimate amounts of profits are externalised.

In short, it is clear that imposing capital limits on foreign banks as on Zambian banks is not going to ensure that those banks identify with the country's objectives. This is not however to suggest that a total expropriation of foreign banks is the solution. Those banks can be effectively utilised by drawing upon their experience in banking and in creating sufficient and unimpeded competition. What are required therefore are regulations and incentives that ensure that foreign commercial banks are not inhibited in the level of capitalisation and thereafter mobilisation and allocation of financial resources.

Another way of looking at capitalisation questions is that there appears to have been a shift in outlook on the part of the government from the pre-1971 emphasis on encouraging more and bigger banks, so long as they identified with Zambian aspirations. That old perception was evidenced by provisions in the Banking Act 1965, requiring banks whose head offices were situated in Zambia to maintain a paid up equity capital and unimpaired reserve funds amounting to not less than K300,000. Those whose head offices were situated outside Zambia were on the otherhand, allowed a higher minimum equity capital and unimpaired reserve funds, but these could not exceed K500,000.⁶⁸ The 1971 Act introduced a shift in this situation

68 See Chapter Three.

by allowing the foreign controlled banks a bigger minimum equity capital rather than Zambian banks. Two explanations could be raised, in respect of this change of direction. These are that the authorities wanted more and more Zambians to form up their own banks so that they could fill up the vacuum left by the less interested foreign banks and also compete with them. The lower capital requirement for Zambian owned banks with a government stake in their operations was therefore seen as a mechanism for attaining control by means of the market forces in place of the failed method of persuasion or takeover. Secondly, the change could have been motivated by the view that if foreign banks are to be allowed to continue operating with less government control, then they must bring something in return; namely a bigger capital input.

Grand as these perceptions may appear to be, one or two criticisms can nevertheless still be levelled at them. In one way they are a disguised admission of failure to acquire control of banking in the country and therefore an indication of the abandonment of any pretensions to return to the 1970 reforms. But in another sense the 1971 capitalisation requirements are a green light to foreign owned banks authorising them to set the agenda for the whole banking industry in the country. This explains why no Zambian bank or group of banks has been able to wrest the initiative to set up a different set of principles from the foreign banks. Indeed it is to be noted that instead of declining these

foreign banks are expanding very rapidly and dictating new practices as evidenced by the Barclays Bank's pioneering venture into farming schemes.

6:4:2. Regulations Relating to Board Membership

It is clear from the existence of the stipulation requiring Zambian representation on the boards of directors of all locally registered banks that there is no longer a desire to continue with an effort to change the basic structure of the banks in terms of their ownership, middle management or inclusion in the planning process. In other words, the government seems to have conceded that those banks that are presently privately or foreign owned will continue to be so and that it will merely appeal to them for co-operation and compassion via the voice of a few Zambian delegates or symphasisers who sit on their boards. This concession obviously represents a lot of implications for original government policy and objectives.

In the first place, requiring Zambian representation on the boards of foreign owned banks, as a means of controlling or influencing their business outlook is not an altogether revolutionary development. It was part of a social development and debates which started in the 1920s following the Dodge v Ford Motor Company case⁶⁹ where the issue was whether a car

69 204 Mich. 459, (1919).

making corporation can decide to put back profits into the business and selling a large number of cars at a lower price at the expense of paying dividends to shareholders. In other words, are directors at liberty to turn a corporation into a semi-eleemosgnery institution as opposed to a business institution. The court said orbiter that a business corporation is organised and carried out primarily for the profit of the stock-holders. The discretion of directors is to be exercised in the choice of means to attain that end and does not extend to a change in the end itself, to the reduction of profits or to the non distribution of profits among stockholders in order to devote them to other purposes. It however, proceeded to hold that it had no reason to interfere with the proposed expansion of the company's business, nor was it convinced that the alleged motives of the directors menaced the interests of shareholders.

By 1929, however, people like Owen D. Young, a lawyer who became president of General Electric, were already speaking of a rising notion that managers were "no longer attorneys for stockholders", but "trustees of institutions owing obligations to employees, customers, stockholders, and the general public".⁷⁰ In 1932 Professor E.M. Dodd took that theme up and developed a theory that directors are trustees not only for

70 See e.g. Wilber G. Katz, Responsibility and the Modern Corporation; The Journal of Law and Economics, October 1960, P.75.

shareholders but also for the community.⁷¹ This theory has in turn led to the notion that the company is a social institution which has duties and responsibilities towards the community. As Bhagwati J. of India recently put it :

"maximisation of social welfare should be the legitimate goal of a company and shareholders should be regarded not as proprietors of the company but merely as suppliers of capital entitled to no more than a reasonable return and the company should be responsible not only to shareholders but also to workers, consumers and the other members of the community".⁷²

He adds that, "a company should be guided in its business by considerations of national economy and progress".

The use of the board as a mechanism to gain control of the banking sectors and to achieve its participation in national programmes and re-orientation of its outlook, cannot however, erode certain basic realities in the institutional make-up or set-up of Zambian commercial banks. While the spirit of the Doddian theory may apply to wholly owned Zambian companies, it is hard to see how it can sway foreign controlled banks which have different sets of constituents to attend to. As seen, in Zambia such foreign owned banks are in the majority as only two of the country's banks can boast of full-fledged Zambian proprietorship. It is common knowledge

71 See "For whom are corporate managers trustees?" 45 Harvard Law Review 1932 1145-63. See also A.A. Berle and J and G.C. Means, The Modern Corporation and Private Property (New York : Harcourt, Brace and World, INC. 1932) 356. See also A.P. Smith MFG Co. v Barlow 13 N.J. 145, 154.

72 See National Textile Workers' Union v P.R. Ramakrishna AIR 1983 SC 75 at P.81 See also note 76 below.

now that multinational companies do not always share the same goals as their host governments. Chief among their points of difference, is the requirement that these companies like local companies should perform social tasks, some of which have the potential of eroding profits. Such tasks as training local personnel, establishing labour intensive industries, or production methods, investing in poor and often inaccessible rural areas are the main embodiments of government goals which have been quite unpopular with most foreign controlled companies. Others are price controls and other interferences with the market.⁷³ Only recently Heinz Corporation broke off a joint venture agreement with Refined Oil Products (ROP) of Zambia after the government reintroduced price controls.⁷⁴

In short, the board room representation requirement instigated by the government assumes that the Zambian or long term resident contingent on company boards will always manage to either out vote or convince and win the sympathy of the foreign directors on fundamental national aspirations and investment choices of industry.⁷⁵ These assumptions as seen already are illusory. Without achieving an accommodation with such foreign companies at the organisational or investment level on such matters as the proportions of shareholding going

73 See R.J. Bhatia and D.R. Khatkhate, Financial Intermediation and savings mobilisation and interpreneurial Development : The African Experience 22IMF Staff Papers 1975 12.

74 See Times of Zambia, 11th July 1987.

75 In fact out-voting is impossible as the authorities erroneously left the number of Zambians or established representatives to constitute only half not more, of each board's members.

to foreigners and Zambians, the purposes of the company, its management (especially middle or executive management), location, etc, it is highly improbable that board room representation will lead to consensus and unity towards social and national goals. In this regard it is surprising that section 4 is silent on the issue of requiring indigenous participation in foreign firms by obliging those firms to sell a certain percentage of their shares to Zambians.

Taking board room representation as a legal concept per se, it is clear that contradictions abound, and a number of questions about its efficiency also arise. To start with current Zambian company law is far behind Justice Bhagwati's notion of corporate social obligations. Bhagwati's principle of social responsibility was properly founded, based as it was on existing Indian law. Under section 10 and 11 of the Companies (Amendment) Act,⁷⁶ the affairs of a company have to be conducted not only in the best interest of its members for their profit but also in a manner which is not prejudicial to public interest.⁷⁷ The Zambian Companies Act, on the other hand is still based on the 1948 English Companies Act and prescribes no social obligations for companies apart from proscribing wilful deceit or harming of the public, public interests or public morals.⁷⁸ Indeed Section 3 of the

76 L111 of 1963.

77 National Textile Worker's Union V. P.R. Rama Krishna AIR 1982 SC 75 at P.86.

78 see e.g. section 22, 25, 39 and 70 Companies Act, CAP 686.

Companies Act⁷⁹ stipulates that a company may be incorporated for the purposes of gain of its members. Section 9 (i) goes even further to provide that "every provision in the memorandum or articles or any resolutions of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void". In other words the Zambian Companies Act makes no allusion to government objectives and social aspirations, which have come to characterise recent public statements and perceptions. Expecting a company incorporated under it to act otherwise than according to its stipulations is therefore, futile at the very least. Indeed it is to be noted that even those banks which were incorporated after 1971, have not made specific commitments to any of the government's objectives such as rural branching, appointment and training of Zambian managers or devising new lending policies and techniques in their memoranda of association.⁸⁰

Another aspect of this matter relates to the duties of directors themselves and how far their citizenship or long-term residence may vary or dilute them. These duties fall into two distinct parts: the fiduciary duties of loyalty and good faith and the duties of care and skill. The fiduciary duties require

79 CAP 868 Ibid (Underlining added).

80 See e.g. Article 3 of the memorandum of Association of the Bank of Credit and Commerce (Zambia) Limited. Even though Sub-Articles(J) and (X) etc authorise the Bank to act as agent for the government, it is clear that they are limited to business work and not social services and objectives.

the director to act in what he believes to be the best interest of the company and to exercise his powers for the particular purposes for which they were conferred. He must not put himself in a position where his ability to do so is restricted or where there is a conflict between his duty and some other interest. In other words the loyalty of a director must be undivided or influenced by no consideration other than the welfare of his company.⁸¹

The fiduciary duty of the company director to act in the best interest of his company has been very narrowly interpreted as an obligation to shun engagements which create a real sensible possibility of conflict between personal interest (or another interest which the director is bound to protect) and the director's duty of loyalty to the company.⁸² The director's obligations are to the interests of the shareholders both present and future.⁸³ Thus despite a long standing debate about the significance of the Doddian theory, the courts still hold that no law exists to make them change their position that "company interests" are no more than shareholders' interests. Thus in Parke V. Daily News Limited,⁸⁴ where the Ladbury family who controlled the selling company wished to

81 Report of the Committee of Inquiry on Industrial Democracy Cmnd 6706 (HMSO 1977), P.60 Par 8.

82 Aberdeen Railway Co. v Blaikie Bros. [1843-60] All.E.R. 249. See also Phipps v Boardman [1967] 2 AC.46.

83 See Dodge v Ford Motor Co. op.cit.

84 [1962] Ch.927.

distribute the whole of the purchase price among the employees who would become redundant as a result of the folding up of the News Chronicle and Star, and where one shareholder sued to restrain them from doing so, it was held by the court that the argument that, "the prime duty must be to the shareholders, but the board of directors must take into consideration their duties to employees", was contrary to law. Plowman J. said in particular that : 85

"no authority to support that position as a proposition of law was cited to me; I know of none and in my judgment such is not the law".

The only qualifications to this position were introduced recently by Section 309 of the English Companies Act, 1985 which provides that :

"the matter to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general as well as the interests of its members".

In addition Section 719 provides that :

(i) The powers of a company include (if they do not otherwise do so apart from this section) power to make the following provisions for the benefit of persons employed or formerly employed by the company or any of its subsidiaries, that is to say, provision in connection with the cessation

85 Ibid at P.963. See also L.C.B. Gower, The Principles of Modern Company Law (London : Stevens and Sons, Third Edition, 1969), P.522.

or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.⁸⁶

These changes were the result of the new thinking which was beginning to incorporate some of the Doddian ideas towards the late 1960s. This new thinking was that the interests of employees, creditors and consumers ought to be considered by boards and their companies in their decisions and plans. Those interests however were considerable only in so far as they coincided with those of the shareholders and did not conflict with them.⁸⁷

In terms of duties of care and skill, there is still doubt as to the value of directorship as a mode of control. As no judicial opinion has been voiced in Zambia on the extent of the directors duties, recourse may be had to other common law sources. In this regard two positions of authority stand out. In Britain a company director is required to exercise his duties with reasonable care and skill. He is however, not required to exhibit a greater degree of skill than may be reasonably expected of a person of his knowledge and experience.⁸⁸

86 Companies Act, 1985 C.6. See also J.H. Farrar, Company Law (London : Butterworths, 1985) P.310 and Ferguson v Wilson (1866) L.R.2 Ch.77. Per Cairns L.J. at P.89.

87 See e.g. Re W and M Roith Ltd [1967] 1 W.L.R. 432.

88 Clive M Schmitthoff and James H. Thompson (Eds) Palmer's Company Law (London : Stevens and Sons Ltd, 1965) P.523.

In America on the other hand, the standard is much higher. Thus in Kavanagh V. Commonwealth Trust Company⁸⁹ it was said that a director is required to know and give direction to the general affairs of the institution and its business policy and have a general knowledge of the manner in which the business is conducted, the character of the investment, and the employment of resources. That case added that :

"no custom or practice can make directorship a mere position of honour void of responsibility or cause a name to become a substitute for care and attention".

English courts, on the other hand have not gone that far. The old, but as yet undisturbed holding, in Re Cardiff Savings Bank Marquis of Bute⁹⁰ demonstrates the laxity in the English position. In that case, the Marquis of Bute was appointed as president of the Cardiff Savings Bank when he was only six months old and in 38 years he attended only one meeting. Upon an action for losses resulting from irregularities in the bank's operation, the court said that it was not possible to expect all the trustees to take a very active part in the management or attend every meeting.

Which ever position is adopted directorship as one of Zambia's modes of exerting control still falls far short of the desired goal. If the British position is adopted, then Zambian

89 23 N.Y.103, 106, 119 N.E. 237, 238.

90 [1892] 2 Ch.100.

directors must be treated as ordinary men and women expected only to possess and display reasonable care and knowledge. This means that the foreign companies who choose them still benefit as such people are unlikely to detect any conflict with government objectives, particularly when they do not know anything about banking. Furthermore, it is unlikely that these companies will appoint people who will question their practices and policies. But even if one or two Zambian directors went out of their way to protect the government's interests, their actions are likely to be voided, as a director's duty of loyalty under English law is to the company as a whole and not merely to a particular section of the membership.⁹¹

If, on the other hand, the American position is adopted, then Zambian directors will be of no use to government objectives as directorship will involve not only the possession of a certain degree of knowledge and skill about the business concerned, but also a willingness and ability to serve the company and its owners faithfully without a division of loyalty. Furthermore, even if it was still possible for such directors to project Zambian interests while serving the interests of their companies, it would be extremely difficult to find properly qualified Zambians to fill up all the positions on the boards of various banks. The experience of parastatal companies where boards are filled with politicians

91 Greenhalgh v Arderne Cinemas Ltd. [1951] Ch 286, at 291. In the case of the Zambian banks the government is not even an investor or shareholder. c.f. note 79 above [or: c.f. note 96 below].

and civil servants justifies these doubts. In view of these doubts, it is difficult to see how significant the use of Zambian directors to achieve control of the Banks can be. Requirements like this one do not solve the problem of poor levels of bank lending in the national economy. They only ensure two things. First they ensure that a few Africans get access to some of the prestigious positions which were denied to them before. This as seen earlier is an uncertain solution as in more cases than not such appointees bring inefficiency to their companies and a loss of competitiveness in the international markets.⁹² Secondly, they ensure that, save for a few more Africans, the same sectors as before will obtain the loans. The vast majority of the people will continue to be afflicted by the same people, policies and practices, thus reinforcing the inherited dualistic and dependent economy.⁹³ Such a promotion or strengthening of an elitist capitalist class is obviously contrary to the government's professed goals, which means the use of directorship in this way retards them instead of promoting them.

To the particular individuals concerned, directorship under section 4 subjects them to the discomfort of having to "wear two hats" at once. On the one hand they must give their full faith to the interests of their companies while on the

92 Anne Seidman, Money, Banking and Public Finance in Africa (London : Zed Books Ltd, 1986), P.51.

93 Ibid.

other hand they are required to be patriotic and push for different attitudes, policies and practices on lending, branching and recruitment of personnel in their respective banks, so as to be in accord with government objectives and plans. These policies no doubt may be seen by some of the foreign owners to be a source of risk or inefficiency and therefore unwarranted. A resolution of such conflicts is definitely puzzling and can cause the individuals concerned to be ineffective. A somewhat similar situation, concerning cabinet ministers who also serve as chairpersons of statutory boards was lamented by the Mwanakatwe Commission, saying :⁹⁴

"A more serious objection in principle is that the minister is required by law to regulate the very body of which he is himself the head and the wearing of two hats can be uncomfortable".

These ministers are on occasions forced by collective cabinet responsibility or considerations of political expediency to countermand decisions reached under their chairmanship. Conversely they would force their organisations to accept propositions which had earlier on been adjudged undesirable or imprudent for business purposes by their boards.

The dilemma of the Zambia director under section 4 and especially under government policy or expectations is also

94 Report of the Commission of Inquiry into the salaries, salary structure and conditions of service in the civil service and the parastatal bodies, Vol.1. (Lusaka : Government Paper No.1, 1975), P.132.

similar to that of the nominee director - a person appointed as a director of a company on the understanding that he will represent the interests of some other person or group of persons. The appointment of such a director appears to be inconsistent with the director's duties of loyalty and conflict avoidance. As Paul Redmond asks :

"Is not the duty of loyalty to general shareholder interests compromised where a nominee director is appointed for the very purpose of acting partially, whether by subordinating the interests of the general body of members to those of the appointer or by identifying company interests with those of the appointer?"⁹⁵

The principal difference between the Zambian company director under section 4 and the nominee director is that the former is appointed not by the person whose interests he must promote but by the foreign companies themselves. The Zambian government itself does not even hold shares in the foreign banks involved.⁹⁶

Judicial opinion however, does not see the position of the nominee director as a dilemma. Thus, despite being another person's representative, such director is required to observe the same duties of loyalty as any other director.

95 Paul Redmond, "Nominee Directors" 10 University of New South Wales Law Journal [1987], P.194 at 197.

96 It only holds shares in one Zambian bank the ZNCB. See chapter Two.

In Bennetts v Board of Fire Commissioners of New South Wales,⁹⁷ Street, J. said that :

"a board member must not allow himself to be compromised by looking to the interests of the group which appointed him".

The only attempts to attenuate the standard of loyalty of the nominee director occurred in two Australian cases decided by the same judge.⁹⁸ Those decisions however, stand alone and have not been followed or considered in any reported judicial decision.⁹⁹

In view of this legal situation, it is clear that what is needed is to get away from placing too much reliance on directorship as a mode of control, less still on testing the loyalty of individual directors. One way of doing this is by legislative coverage of the government's objectives, thereby imposing certain duties and obligations on the banks. These duties may be for the banks to sell some of their shares to local citizens. They may also be to oblige the banks to direct their lending towards certain sectors, preferably by a certain

97 (1967) 87 W N (NSW) 307. See also Boulting V. Association of Cinematograph, Television and Allied Technicians, [1963] 2 Q.B. 606, Lindgren V. L & P Estates Limited [1968] ch 572 and Scottish Co-operative Wholesale Society Limited V. Meyer [1959] A.C. 524.

98 see Levin v Clark [1962] NSW 686 and Re Broadcasting Station 2 GB Pty Ltd. [1964-5] NSW 148 Per Jacobs, J.

99 Paul Redmond, op.cit., P.200.

margin per year, as well as requiring them to set up in rural areas once certain conditions exist.¹⁰⁰ To be successful this method must be accompanied by a proper system of enforcement which is based on defined criteria and supported by trained and competent staff.

It has also been said that to avoid conflicts of loyalty on the part of the board, an investor's interests are best accomplished by the investor exerting his influence to ensure that the members of the company as a whole appoint appropriate directors.¹⁰¹ The government's attempt to use this method unfortunately failed when negotiations for it to acquire some shares and become a member of the banks were abandoned.¹⁰²

Individual banks are also at liberty to indicate in their articles that they will permit certain directors to act in a way which would otherwise offend their duties of loyalty. But as the Zambian government is not a member of these companies it is difficult to see how it can take advantage of this method either.

100 See PP14-203 above.

101 Paul Redmond, op.cit., P.201; citing Institute of Directors, Nominee Directors (Guide to Board Room Practice No.8, 1985), Para.2.

102 See Chapter Four.

6:4:3. Other Short Comings of the Board Room Representation Requirements

In addition to the foregoing observations about the requirement that Zambians or long-term residents should be represented on the boards of non-Zambian banks, at least one other assumption is detectable in that stipulation. This assumption is that a company's board of directors is seen as the real managing authority which the authorities suppose they can use to shape up the banks' policies and terms of business. Several studies have, however, come to the conclusion that this is not the case, and that contrary to the legal norm, the function of managing the business of a company and making business policy generally lies with executive officers rather than the board.¹⁰³ Some of the principal reasons given for this finding are that boards do not really have time to master the intricate details involved in the functions of their companies or to shape up policies on their own. An average board puts in a few hours of work in a year on the business of its company; hardly enough to enable it to be assumed to be in

103 M.A. Eisenberg, "Legal Models of Management Structure in the Modern Corporation : Officers, Directors and Accountants", 13 California Law Review (1975), 375. See also Subramaniam, "Do Owners Control Managers?" Enterprise Magazine, March 1973; A.J. Boyle, "Company Law and the Non-Executive Director : The U.S.A. and Britain Compared" (1978) 27 International and Comparative Law Quarterly, 487 at 491 and R.I. Tricker, "The Independent Director", a study of the Non-Executive Director and the Audit Committee (Croydon : Tolley Publishing Company Limited, 1978).

full control of that business. Secondly boards depend on executives for all the information they need and are thus not in a position to know all the details of the business. Such limited access to information therefore, hinders their ability to shape policy and manage the companies they belong to even if they wanted to.

Other factors inhibiting the board's ability to manage and control the affairs of the company arise from the composition, selection and tenure of its members. Chief executives possess significant leverage on all these matters.¹⁰⁴

As Tables 12 and 13, concerning two of the banks show, an indication of how little the requirement for board room representation can achieve may be grasped from the divisions of responsibilities between Zambians and foreigners. In most banks save for the Citibank and the Grindlays Banks where foreigners dominate all the important positions, the practice so far has been to appoint Zambians to the position of chairman of the board. The Chief Executiveship however, almost always goes to non-Zambians.¹⁰⁵

104 See L.C.B. Gower, The Principles of Modern Company Law, op.cit.

105 Other reports and entries at the companies Registry also reveal this tendency. See also P.310 above.

TABLE 12

STANDARD CHARTERED BANK ZAMBIA LIMITED

Directorate and Administration

Chairman

E.G. Kasonde

Managing Director

J.B. Gait

Executive Director

I. Fraser

Directors

J. Dare C.B.E., QC.

W. Hastie

V.I. Webber C.B.E.

A. Wren

Administration Manager

K.W. Hobbs

Secretary

V.E. Saunders (Mrs)

Registered Office/Registrar's Office

Standard House

Cairo Road

P.O. Box 32238

LUSAKA

Source : Standard Chartered Bank Zambia Limited,
Annual Report, 1984.

TABLE 13

BARCLAYS BANK OF ZAMBIA LIMITED

Directors of the Bank 31 December 1983

A.B. Munyama	CHAIRMAN (Zambian)
D.A. Mason	MANAGING DIRECTOR (British)
D.M. Brookes	British
S.H. Chileshe, G.C.D.S.	Zambian
P.T.S. Miller, O.B.E.	Zambian
J.M. Mwanakatwe	Zambian
F.X. Nkhoma	Zambian
D. Payne	British
O.T. Phillips	South African
D.A.R. Phiri	Zambian
C.A. Stacey	Zambian
J.H.C. Whicker	British
M.A. Meacham	British (alternate to D.Payne)
F.M. Howell	British (alternate to J.H.C. Whicker)

Source : Barclays Bank of Zambia Limited, Report and Accounts 1983.

Apart from the top executive positions, many other important management and technical positions are also largely held by people recruited or seconded by parent banks abroad. With the well known case of inadequate sufficiently qualified Zambians to take over these positions it is difficult to see how boards alone can succeed in changing things. It is also

significant to realise that in some banks articles and memoranda of association specifically exclude board members from interfering in the performance of certain functions. Thus, according to the memorandum of association of the Bank of Credit and Commerce :

"The general powers given by this article shall not be limited or restricted by any special authority or power given to the Board by any other article, provided always that the Board of Directors shall not have the power to sanction any credit, loans and advances, which power shall always rest in the general manager and his professional staff (officers)".¹⁰⁶

Given these facts it is difficult to see how section 4's requirement of Zambian representation on bank boards will alter the day-to-day running of the banks. In a similar situation concerning workers' participation or industrial democracy, it has been debated from time to time whether the election of workers to boards of their companies constitutes an effective way of achieving their control or influence in decision making. In general, the feeling is that without seeking a substantial stake in their organisations or legally obliging such organisations to observe certain statutory procedures and conditions regarding mobilisation and allocation of capital board membership alone is ineffective as managers and executives can manipulate matters.¹⁰⁷ The Bullock Committee¹⁰⁸

¹⁰⁶ See Article 80.

¹⁰⁷ See Eric Batstone, Anthony Ferner and Michael Terry, Unions on the Board : An Experiment in Industrial Democracy (Oxford : Basil and Blackwood, 1983). P.4.

¹⁰⁸ Report of the Committee of Inquiry on Industrial Democracy Cmnd 6706 (HMSO 1977), P.37, Para.5.

reached a similar conclusion in 1977 in respect of worker's representation. In its report it argued that participation below the board level is essential. In other words representation on the board should be supplementary to and should not in any way detract from the broad questions of identifying the interests of the company with those of its employees, customers and especially the community as a whole.

6:4:4. Shortcomings of the Local Incorporation Requirement

The requirement that foreign owned banks wishing to operate in Zambia must be incorporated in the country, as a means of extending control over their affairs, is also of dubious value. Many studies have revealed that multinational companies are able to control their subsidiaries in developing countries and realise enormous profits out of them by a host of devices.¹⁰⁹ These companies control the technology and other materials such as spare parts, semi-processed components and raw materials which such subsidiaries depend on. This means that when faced with regulations that they disapprove of or a nationalisation or semi-nationalisation of their subsidiaries, these companies can fall back on these devices

109 See Thomas, J. Biersteker, Multinationals, The State and Control of The Nigerian Economy, (Princeton, New Jersey : Princeton University Press, 1987), p.16. See also Robert J. Ledogar, Hungry for Profits: US Food and Drug Multinationals in Latin America (New York : IDOC/North America 1975). See also Donald Rothchild and Robert L Curry Jn. Scarcity, Choice and Public Policy in Middle Africa (Berkeley Los Angeles and London : University of California Press, 1978), P.158.

to continue shaping the direction of such subsidiaries. Other devices include the use of fronts, or inflation of the takeover price. There is evidence of both methods being used in Zambia as seen in Chapter Four.¹¹⁰

Multinationals can also assume a supplier's role to their former subsidiaries. This and some of the methods mentioned above were identified as obstacles to the Nigerian first indigenization decree.¹¹¹ Another problem in that case was however, the inability of the local people to purchase shares in the companies affected by the decree.

The superior management skills of multinational companies also help them to have a leverage on the developing countries who are forced to conclude management and service agreements with them so as to retain efficiency and remain competitive.¹¹² Finally, these companies are able to use political as well as financial pressure on the host countries. In this regard it is important to remember that some of these companies command resources which are by far bigger than the GNP's of most third world countries.¹¹³ In terms of banks many of

110 See P.187 for fronting, and see also Mwanakatwe's allegation that banks were extortionate in their demands during take-over negotiations, chapter four P.192.

111 Thomas, J. Biersteker, op.cit., P.52.

112 See P.318. above.

113 Thomas, J. Biersteker, op.cit., P.15. See also Stephen Robock, Kenneth Simmonds and Jack Zwick, International Business and Multinational Enterprises (Hornewood Illinois : Richard D. Irwin, 1977), P.277.

them also enjoy an added advantage of being big lenders to some third world governments.¹¹⁴

The conclusion of lucrative management and consultancy contracts has been one of the most popular and useful ways employed by international companies to control things in developing countries. They also use the well known device of over invoicing their subsidiaries for services and use of facilities. Within Zambia itself many foreign companies whose businesses were taken over after the reforms managed to secure management contracts and continued to rule the businesses in the same way as before. In the retail business, for example, an agreement was concluded between the Zambia Consumer Buying Corporation Limited (ZCBC) and Booker (Zambia) Limited after the take-over of 51 per cent interest by the state in the Consumer Buying Corporation (Zambia) Limited (CBC). A subsidiary of Booker McConnell Limited of London, which had previously owned and operated the CBC was retained to manage the venture.¹¹⁵ Although the contract specifically reserved certain matters as the responsibility of the Board of ZCBC or its chairman, the exercise of Booker's powers of management was

114 A U.S. study on foreign lending confirms this. See Robert Morris Associates, Domestic and International Commerce Change-Offs (Philadelphia, 1977) Cited in R.Z. Aliber, et.al., Key Issues in International Banking, Conference Series No.18 (Sponsored by the Federal Reserve Bank of Boston, October 1977), P.24.

115 See Management Agreement between the Zambia Consumer Buying Corporation Limited and Booker (Zambia) Limited, 30th June 1968, cited in J.M. Mulwila, op.cit., P.75.

almost unfettered. The managing company had "full power and authority to do everything necessary or expedient for the management and control of the whole business affairs and trading operations of ZCBC". The extent to which Booker (Zambia) Limited was accountable to ZCBC was limited to submitting quarterly summaries of accounts showing trading results, and financial position of ZCBC, and half yearly written reports on the activities, results and financial position of ZCBC.

The service, management and other contracts which were signed by the Zambian Government (through ZIMCO) with the mining companies following the take-over of the mines also indicate the extent to which Zambian measures could have been defused. Under those agreements, ZIMCO, for instance, agreed that the mining companies which had become minority shareholders would approve all expansion and investment plans. They were also empowered to supply all the managerial, financial, commercial and other services. ZIMCO, therefore was excluded from looking elsewhere for cheaper or better offers. The services concerned included project consultancy, preparation of reports and financial statements, work study computers, industrial relations, recruitment of expatriate staff, external purchasing, production scheduling and research and development. ZIMCO also agreed that mining companies would pay their parent companies, in foreign exchange, .75 per cent of the gross turn over for these services. They would also pay

2 per cent as engineering service fees with all operational costs reimbursed to the parent companies. With respect to the sales and marketing agreements it was agreed that the parent companies alone will act as sole agents in every country for the purposes of finding purchasers.¹¹⁶

In the case of the banks, the fact that most of their key positions are still held by expatriates seconded from parent companies is an indication of how strong the grip of those companies is and of how important the management strategy is considered to be.¹¹⁷ The use of over-invoicing for other services and business transactions cannot also be ruled out. One indication of this is that the authorities are always detecting anomalies in the externalisation system of profits, customers' payments and other applications of foreign exchange and are ever devising new rules to seal the loopholes. R.A. Sowelem has reported that during the federal era the banks used

116 See M.L.O. Faber and J.G. Potter, Towards Economic Independence, Papers on the nationalisation of the copper industry in Zambia, University of Cambridge, Department of Applied Economics, Occasional Papers, No.23 (Cambridge: Cambridge University Press, 1971).

117 A review of the reports of all the foreign owned banks in Zambia shows that all the senior management positions are occupied by expatriate staff. Those positions are Managing Directors, General Managers, Chief Accountants, Credit Controllers, Company Secretaries, etc. The only positions usually given to Zambians include public relations, security, branch management, assistant accountants or auditors, etc. See Tables 12 and 13 above.

relatively higher rates for international transactions and were able to externalise larger sums of money as a result.¹¹⁸

Foreign banks have also been able to retain control in developing countries though the power of lending money to governments and parastatal or other companies doing business there. In addition to being a useful source of profits, such activities also endow them with authority to make demands on the management of national economies, which includes the regulation of banks. Some of the banks which have made loans to Zambia are also parent companies to Zambian banks.¹¹⁹

The duties of loyalty expected from a company director, coupled with the inability of a board of directors to exercise independent and unaided management in most cases, obviously indicate that section 4 of the Banking Act, 1971 is ineffective as a means of controlling banks in Zambia. Other problems as seen are the use of devices like management contracts, supplies of foreign goods and technology which Zambian subsidiaries of the affected companies have no control over. In the face of such odds, it can only be said that this provision appears to be one of those third world regulations which are hastily con-

118 R.A. Sowelem, Towards Financial Independence in a Developing Economy, (London : George Allen and Unwin, 1967), PP.60-63.

119 Citicorp, a leading international lender has a branch in Zambia. Standard Chartered and Merchant Bank Limited, a member of the Standard Chartered Group has also been a lending leader to Zambia. See Standard Bank Zambia Limited, Annual Report and Accounts, 31st December 1971 P.22 and Standard Chartered PLC, Annual Report, 1985, P.21.

ceived and created to satisfy mainly political objectives. It was created in desperation bordering on vengeance following the break-up of negotiations to acquire some of the shares of the leading banks in 1970. According to J.W. Garmany¹²⁰ such hasty and impulsive reactions are generally harmful to the cause of the host nations. They constitute "a clear evidence of the absence of patience which is a common characteristic of many African leaders who seek to achieve maximum economic development in the shortest possible time and end up with their strategies and priorities mixed up". This view is shared by Professor Yash Ghai who asserts that the Tanzanian nationalisation programme was betrayed by that government's impatience.¹²¹

6:5. Prudential and Fiscal Regulations

As seen in Chapter Three, prudential and fiscal regulations are used for credit and monetary management as well as to ensure safe banking. They are most commonly used in the areas of balance of payments, especially in respect of foreign exchange externalisation. They are also used to control

120 J.W. Garmany, "Enterprise, Management and Organisation in Africa : A Plea for Research", 9 Journal of Modern African Studies No.4 (1971), P.634.

121 Yash Ghai, "Law and Public Enterprise in Tanzania" in Yash Ghai(ed)Law in the Political Economy of Public Enterprise; African perspectives (Scandinavian Institute of African Studies, Uppsala, 1977). P.244.

commercial bank liquidity by regulating lending and the money supply. In particular fiscal regulations are an anti-inflationary weapon which monetary authorities employ to prevent declines in industrial output and employment. Prudential regulations on the other hand are employed to ensure prudent and safe banking and customer satisfaction.

In Zambia the Bank of Zambia has been empowered by its statute to act as the sole monetary authority.¹²² In exercise of this power, it is obvious that the bank will take advice from other sources. The government in particular, can set or issue guidelines and directives about its existing and new economic policies. From time to time however, the government issues directives which in reality amount to an exercise of the bank's functions. Some of its directives have already been referred to and they include the imposition of restrictions on the borrowing ability of foreigners and the requirement that all such borrowing be approved by the exchange control authorities. They also include restrictions on remittances and the creation of a pipe line.¹²³ In addition, the omission of the right to treat balances and assets held abroad, especially in U.K. as part of the liquidity ratio of commercial banks is also a government idea.

Such occasional assumptions of the Bank of Zambia's

122 See Bank of Zambia Act.

123 See Chapter Five.

functions by the government is contrary to law. It also creates problems and contradictions. First government directives or operations are more often than not based not on economic or monetary considerations, but on political expediency. Where economic considerations are applied they tend to be isolated and adhoc depending on the pressures of the day. The bank's role on the other hand is to apply government policy using professionals and technically feasible methods to produce the desired objectives. When Civil Servants or politicians take it upon themselves to short circuit the system, the result usually tends to be confusion.

The other problem is the multiplication of contradictions as some of the directives are not co-ordinated. The most common example of such contradictions is in the area of foreign exchange where not only the Bank of Zambia is involved but the Ministries of Commerce and Industry on the one hand and Finance and Development on the other. All three authorities are free to issue instructions and set conditions for commercial banks and their customers to observe. The Ministry of Commerce and Industry is responsible for promoting industrial and commercial activities. That responsibility also involves the formulation of guidelines for importers for which the Ministry processes import applications and licences. Those import licences are also a pre-requisite condition before any foreign exchange can be remitted outside the country as payment for goods. Clashes with the functions of the Ministry of

Finance and Development, which is responsible for the management of the country's financial resources, are always detectable in the area of guidelines for foreign exchange; where its conditions sometimes contradict those of the Ministry of Commerce and Industry.

Thus, although all three authorities are supposed to co-ordinate their responsibilities, sometimes due to delays or over zealousness on the part of certain officials break downs do occur with conflicting and sometimes numerous or unnecessary conditions being issued. On October 7th, 1985, for instance, the Bank of Zambia announced that the value of the Kwacha was in future going to be determined by market forces in a weekly auction.¹²⁴

But only a few months later, some measures were announced at State House to override the role of market forces in fixing the rate of the Kwacha.¹²⁵ According to those new measures commercial banks were prohibited from giving overdrafts to clients for the purposes of bidding at auctions as such extra funds were seen as being responsible for the huge rise in the auction bids which drove the Kwacha's value even lower. Old bidders were also required to show evidence of expenditure of previously acquired foreign exchange before fresh bids could be considered.

Another ground for conflict is the fact that these three

124 Zambanker, No.20, October 1985, P.4.

125 Although the measures were announced by the Governor of the Bank of Zambia, it was clear that he was heavily influenced by government concern and pressure. See Times of Zambia, Monday July 14, 1986.

authorities do not necessarily share the same list of priorities at all times. For this reason customers who are considered to belong to a priority group by one authority are sometimes not considered to be so by the other two. This means that customers who have been issued with tax clearances by the Ministry of Finance,¹²⁶ may nevertheless fail to obtain import licences from the Ministry of Commerce and Industry. This multiplication of priorities in fact tends to increase as each authority creates and observes its own procedures. In respect of import licences, for example, it is known that the normal procedure, is that a person must first apply to the Ministry of Commerce and Industry for registration as an importer. When their application has been approved and registered, the importer will then be required to obtain forms from his bank or the Bank of Zambia to apply for foreign exchange. He must also comply with the Ministry of Finance's tax clearance requirements. All the documents will thereafter be ferried by the applicant himself or by post to the Bank of Zambia, which also has to satisfy itself that he has complied with many other conditions. Clearly this process is lengthy and can sometimes render a customer's plans obsolete as costs and rates of interests go up. Other events such as border closures, sanctions, etc can set in and override the plans while the applications are still being processed. The fact that such

126 In accordance with 7th October 1985, directives. The fact that they were issued by the governor but requiring people to be answerable to the Ministry of Finance is a further indication that the Government and not the bank was responsible for them.

contradictions are allowed to exist in the face of strong government objectives therefore raises some questions about the effectiveness of its regulations. With regard to requirements like tax clearances which the Bank of Zambia has begun to demand, it is obvious that these were not really designed for its functions as regulator of the financial system. They are a government instrument which is merely going to entangle it in a bureaucratic process which is undesirable for the world of business.

It is also notable that many other legal provisions are a source of potential conflict or contradiction, particularly with regard to the power to regulate liquid assets and reserves. According to section 42 of the Bank of Zambia Act, the bank alone may prescribe the minimum liquid assets and reserves which each bank and financial institution may be required to hold.¹²⁷ But under the Banking Act, 1971 not only the Bank of Zambia, but also the Registrar of banks and the Minister have power to regulate or give directives regarding the regulation of these matters. In particular section 21 (5) provides that the registrar may waive the payment of or refund the whole or part of the penalty imposed in connection with any bank's failure to maintain the minimum holding of liquid assets, where he is satisfied that that failure was not due to an intent to evade the provisions of the Act or to the want of reasonable care. Sub-section (6) of the same section, on the

127 This also applied under section 29 of the old Act - The Bank of Zambia Act, CAP 699.

other hand, stipulates that the Minister may at his discretion impose limitations which he thinks fit upon the per centage of liquid assets which may be held by banks. Such a combination of sources of authority in one statute is undoubtedly a recipe for paralysis in the system of managing the fiscal and financial sector. Even more the permission of a discretionary use of power to a politician in respect of economic functions, given their tendency to change swiftly, is a mistake.

With regard to selective credit controls, the ones most commonly used in Zambia are liquidity ratios, reserves and interest rates. There is however a tendency among the banks to maintain higher amounts of money for purposes of the liquidity ratio or reserves than demanded by the authorities.¹²⁸ Such actions affect the outflow of credit as they amount to hoarding of cash instead of releasing it for investment. One consequence of this practice which is overlooked, especially in the case of reserves, is that they do not earn interest at the Bank of Zambia, but merely increase the administrative costs of the banks.¹²⁹ Even though the actions of commercial banks in engaging in this kind of hoarding is largely voluntary it is significant to point out that the use of liquidity ratios and reserves to regulate the credit market in a country whose

128 See Chapter Five.

129 See T.R.G. Bingham, Banking and Monetary Policy : Trends in Banking, Structure and Regulations in OECD countries, OECD 1985, P.104.

income depends on seasonal crop sales and an imperfect mineral market obviously imposes a heavy burden on the banks. In other words, the fluctuation in crop and mineral sales and their consequent effect on the money supply would seem to be sufficient forms of control in a small economy.¹³⁰ It would seem that one of the reasons for hoarding cash in excess of the statutory requirements is to feed the lucrative treasury bills market. The exclusion of all external balances from the category of liquid assets while including long-term government securities was, as the Bank of Zambia report indicates, aimed at achieving the same purpose.¹³¹

Turning now to interest and other rates, these have been employed quite frequently by the Bank of Zambia. For example, from 1966 to 1972 interest rates on deposits with commercial banks ranged from 3 to 5 per cent. Those on loans on the other hand were between 6 and 10 per cent.¹³² By 1984 these had changed to between 7 and 8 per cent for deposits and 12 and 14 per cent for loans respectively.¹³³ The Commercial banks themselves however had no control in the fixing of these

130 See for this view E.E. Jucker-Fleetwood, Money and Finance in Africa, The Experience of Ghana, Morocco, The Rhodesias and Nyasaland, The Sudan and Tunisia (London : George Allen and Unwin, 1964), P.106.

131 Bank of Zambia Report and Statement of Accounts for the year ended December 31st 1972, P.57.

132 Bank of Zambia Report and Statement of Accounts for the year ended December 31st, 1972, P.82.

133 Bank of Zambia Report and Statement of Accounts for the year ended December 31st, 1984, P.106.

rates. It was not until 1985 that they acquired the power to do so.¹³⁴ When changing the law to introduce the right for banks to fix their own rates, the authorities virtually conceded that the previous system was repressive in the McKinnonian sense¹³⁵ as it prevented banks from increasing their lending levels. The fact that virtually every bank raised its rates soon after the power to do so was granted indeed confirms that there was widespread disaffection with the previous rates. Table 14 belows shows some of the new ranges which have been imposed.

TABLE 14
COMMERCIAL BANKS INTEREST RATE STRUCTURES
DATE : 6TH JUNE 1986

BANK	TIME DEPOSITS MIN.	MAX.	LENDING RATES MIN.	MAX.	SAVINGS DEPOSITS
Meriden	9.0	25.5	25.0	30.0	11-12.50
Standard Chartered Bank	15.0	19.8	25.0	33.0	15.0
Indo-Zambia	17.0	21.0	25.5	28.0	15.0
Zambia Nat. Comm. Bank	21.0	22.5	20.0	30.0	16.0
Bank of Credit & Comm.	11.0	23.0	21.5	28.0	15.0
Barclays Bank	14.0	18.0	18.0	28.0	16.0
Grindlays Bank Int.	-	24.0	29.0	29.0	17.0
Citibank	6.5	21.0	26.0	30.0	Nil
African Commercial Bank	19.0	24.24	27.5	30.0	16.0-18.0

Source : Bank of Zambia & Commercial banks - weekly returns

See also J.L. Muchinga, Deputy General Manager Credit Guarantee department, Bank of Zambia, in Banking in the Current Economic environment; with specific reference to Zambia in a Paper presented to the Workshop in Management skills at Management Services Board (MSB), Lusaka, 1986.

¹³⁴ See Chapter Three.

¹³⁵ See Ronald McKinnon, Financial Policies, in John Cody, Helen and David Wall (eds) Financial Policies for Industrial Progress in Developing Countries (World Bank : Oxford university Press, 1980) P.98. See also Chapter One.

In addition, although there is no evidence to support this, it can also be said that the response of the members of the public in respect of opening deposit accounts with commercial banks might have been higher had the banks been free to fix their own rates earlier on. It is important to note in this respect that during the same period of operation as the banks the Post Office Savings Bank (now the National Savings and Credit Bank) and the building society enjoyed the right to fix their own rates.¹³⁶ This, plus an extensive network throughout the country, in respect of the post office savings bank, might have enabled it to lure some of the depositors who would otherwise have gone to the banks. In addition, the absence of a strict regime of regulations such as that imposed on commercial banks, also created further advantages to the Post Office Savings Bank over its competitors. In this respect it is notable that the only comparable system of regulation on the Post Office Savings Bank is that only its loans are subject to a lengthy and bureaucratic form of approval by a government minister.¹³⁷

Finally, it is significant to note that although the Zambian government's development plans do recognise the need to use borrowing both from international and local banks for

136 See also Mphanza P. Mvunga, "Zambia", In Neville Rubin and Eugene Cotran, Annual Survey of African Law, Vol.VII, London 1973.

137 The National Savings and Credit Act, No.24 of 1972 Section 19.

investment and other social requirements, none of these plans gives any specific indications as to the amounts each bank or the banking sector as a whole must make. The plans also fail to make any adequate classifications of the priority sectors to be benefited or the mode of allocation to be used in supplying such sectors. These omissions seem to confirm McKinnon's assertion that :

"most developing countries have formal plans for industrial development, public infrastructure such as roads, utilities, the future course of education, foreign trade, agriculture, and so on. Yet planners typically do not set targets for, or even assess achievements in the financial sector. Unfortunately, regulation rather than development is the usual emphasis".¹³⁸

In Tanzania however, although no "essential sector's" list or specific credit allocation targets have been decreed, the commercial banks have been instructed as to the sectors to which they should give priority in their loans distribution. Thus, when outlining the operational guidelines of his bank, the chairman of the National Bank of Commerce (Tanzania) said that although the usual commercial lending principles, such as analysis of the borrower's resources and liabilities and the purpose of the loan are to be applied, the bank will go beyond the orthodox type of lending to be guided by the country's plan.¹³⁹ He added that :

138 Ronald McKinnon, op.cit. P.93.

139 National Bank of Commerce, "Chairman's Statement, Annual Report and Accounts", June 1971. PP.17-18. Cited in Ali Issa Abdi, Commercial Bank and Economic Development ; The Experience of Eastern Africa (New York and London : Praegar Publishers, 1977), P.81.

"This shift of emphasis from the orthodox types of lending is also evident in the areas and sectors that we give priority to when lending. We seek to give priority where the criteria are met, to Tanzania's indigenous institutions, businesses promoting exports, industries providing employment, and import substituting industries. We also give priority on rather premium terms to those geographical areas which are economically still lagging behind". 140

In Kenya similar instructions have been made regarding sectors which are to be considered as priority sectors by commercial banks. Ali Issa Abdi points to the Kenyan Central Bank's numerous policy statements requiring a shift from trade to productive sectors of the economy, including lending to Africans as proof of this situation. In 1971, commercial banks were instructed to switch credit from consumer durables and imported luxuries to the domestic production sectors such as agriculture and manufacturing.

By failing to include the banking sector fully in the planning process the authorities lost the use of one of the most effective tools for monitoring the responses of commercial banks to national needs. As one senior banker recently stated in a reaction to persistent criticisms of the banking sector:

"banks were beginning to lose patience with those who constantly attack them for allegedly lacking interest in national development while at the same time they remain denied of any form of cooperation or consultation with the planning authorities". 141

140 Ibid.

141 See Mr Friday Ndhlovu, Managing Director, ZNCB's comments in Times of Zambia, 3rd September 1987.

Perhaps the most fundamental consequence of the failure to include appropriate projections and targets for commercial banks in the planning system is that this has deprived the neediest sectors of a most appropriate mechanism for a nationwide calculation and satisfaction of their requirements. In this regard it is significant that that omission in the planning system is matched by an even larger but inevitable omission of the same by the legislators and monetary authorities. No legislation affecting banking operations in Zambia mentions any of the government's original aims and objectives outlined in the 1964 white paper.¹⁴² Even more serious than this, no piece of legislation outlines any targets, let alone criteria of any kind for the banks to abide by in their operations. What the banks do therefore is entirely discretionary and voluntary.¹⁴³ This also means that even though certain sectors, like the small scale enterprises, peasant farming, and other Zambian business ventures are

142 White Paper on Industrial Development, 1964 (Revised in 1966) Ministry of Commerce and Industry (Lusaka, Government Printer). See Chapter Four, P.171

143 In other countries which subscribe to socialism these things are done. See John N. Hazard, Isaac Shapiro and Peter B Moggs, The Soviet Legal System, Contemporary Documentation and Historical Commentary (New York; Oceania Publications, 1969) P.229. See also Ann Seidman op.cit., P.278-280. Compared to such socialist systems the Zambian National Development Planning System is inappropriate. It tends merely to outline policy rather than targets or projections. Thus, it is not unusual to see the Housing sector being required to work through the banks and other financial institutions to provide resources to the government and the private sector without any mention of the guidelines. See e.g. Third National Development Plan (Lusaka, National Commission for Development Planning; Government Printer, 1979), P.38.

regarded as vital national priority sectors, they are nevertheless subjected to the same interest rates and charges and the same treatment and conditions as the parastatal and foreign owned companies.

With regard to controls imposed by the Bank of Zambia in exercise of its statutory functions, these admittedly allow for exemptions from credit restrictions on agriculture and small scale enterprises from time to time.¹⁴⁴ It is important however, to realise that such exemptions, especially in relation to agriculture, are made for the purposes of facilitating crop buying by NAMBOARD and the co-operative unions which require large sums of money during the buying season. Applying the same restrictions to them would therefore hamper that task.

While these omissions are clearly regrettable, any inclusion of banking operations in the planning system would, by itself make very little difference. As far as existing statutes are concerned there are no appropriate ways of ensuring that banks comply with national objectives. They act largely on voluntary lines.¹⁴⁵ This means that individual banks may easily decide to freeze all credit during the period of restriction. They may also decide to divert their lending from the exempted sectors to the sectors of their own choice without hindrance. As seen in Chapter Three the only existing

144 See Chapter Five.

145 Supra note 103.

agency to enforce regulations - The Inspectorate Department of the Bank of Zambia - has been constantly supplied with low caliber personnel and limited powers.¹⁴⁶ At the moment it is only allowed to ensure compliance with the procedures and requirements relating to exchange control, reserves, liquidity ratios, registration and annual as well as seasonal and monthly returns. For some of these functions it applies simple methods like document reading and passport checks to prove compliance with procedural requirements and endorsement of all received foreign exchange, respectively. None of the Bank's reports on the operation of the department refers to efforts to prove sectoral credit flows and other ways of ensuring compliance with the government's original objectives, for example.

6:6. Securities Regulations

These include the Agricultural Credits Act, The Trade Charges Act and some aspects of the Companies Act relating to the creation and registration of charges and other securities. They also include the Lands and Deeds Registry Act, The Land Conversion of Titles Act and The Bank of Zambia Act's Loan Guarantee Scheme.

146 See Chapter Three.

6:7. The Agricultural Credits Act

In Chapter Three, it has been shown that a holder of a fixed agricultural charge has priority over other creditors.

According to section 4(5) :

"Where any proceeds of sale which, in pursuance of the obligation imposed by sub-section (2); ought to be paid to the holder are paid to some other person, nothing in this Act shall confer on the holder a right to recover such proceeds from that other person unless the holder proves that such other person knew that such proceeds were paid to him in breach of such obligation, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge".

What this means is that although priority is accorded to the creditor who holds a charge, such priority however, only applies where the other creditor has actual knowledge that a particular payment to him is in breach of the debtor's (farmer's) obligation to the first creditor. The Act further provides that provided the farmer pays the proceeds of the sale to the charge holder, he is free to sell any of the charged property. It is however not the responsibility of the purchaser or the auctioneer to ensure that the proceeds of such a sale are paid to the charge holder even if they may be aware of the existence of the charge.

These provisions clearly raise questions about the adequacy of the protection provided by the charge. It has been said that the charge's principal task is to make the farmer accountable to the charge holder.¹⁴⁷ In addition, the Act

¹⁴⁷ Anthony C. Mulimbwa, The Law and Agricultural Development in Zambia, (Ph.D. Dissertation, London University, 1987).

makes it a criminal offence for any farmer fraudulently to fail to pay the holder the proceeds from the sale of property which is the subject of the charge.¹⁴⁸ Similarly, a farmer, who fraudulently removes or suffers to be removed from his land any property subject to a charge is guilty of an offence. In both situations the offending farmer is liable to imprisonment for a period not exceeding three years. Another remedy is an action for a breach of contract.

It is with respect to the involvement of third parties however, that the protection of a charge appears to be most questionable. As seen a mere knowledge of the fact that the farmer has charged some property is not sufficient to avoid sale or payment to a third party. What is required is knowledge not only of the charge itself but also of its breach by way of sale or payment to the third party concerned. This puts the onus on the charge holder to prove that the third party knew of the breach of the charge. Undoubtedly, this places the charge holder in a very difficult situation. It is not easy to prove that a third party's knowledge went beyond the existence of the charge itself to include the actual process of breach or of the expenditure of the proceeds from the sale. It is significant to note in this regard that notice of the charge may be obtained from the farmer only in very limited circumstances. Indeed it is unlawful for the farmer to print for publication or publish any list of

¹⁴⁸ Section 10.

agricultural charges. It is also not permitted to publish names of farmers who have created agricultural charges.¹⁴⁹ Given these difficulties, it is not easy to see how an agricultural charge can be an attractive inducement and security to banks, carrying as it does the mere existence of the right to sell. Gardner, A.D.C.J's assertion that this is irrelevant¹⁵⁰ serves to emphasise doubts one must have about the seriousness and intentions of the legislature. Indeed lenders may ask why would a genuine farmer need a loan when he can sell one of his assets or stocks or intends to do so. On the issue of notice, it can be argued as Mulimbwa again does, that where there is notice, constructive, implied or express, it would have been fair to require third parties to bear the burden of proof.¹⁵¹ In other words it should be the third party's duty to prove that the goods concerned were not the subject of a charge. He would also have to prove that the proceeds paid to him were not the result of a breach of obligation.

With regard to the floating charge, the effect of mere knowledge of the charge but not of its breach is the same as in a fixed charge. The same questions about the value of the charge therefore apply. Another cause for concern is the

149 Section 9.

150 Attorney General v Zambia Sugar Company Limited and Nakambala Estate Limited [1977] 2 R 273.

151 Anthony C. Mulimbwa, op.cit. P.405.

ambiguity surrounding the holder's power to ensure that the farmer complies with the agreement. The Act merely provides that a holder of a charge may take possession or dispose of the charged property only in the event of the happening of some agreed event.¹⁵² Presumably this includes a failure to discharge the debt. What constitutes failure however, is debatable. The Act does not specify whether the holder can take possession even after a few instalments have been paid. No doubt, the requirement that any seizure or disposition must be conditional on the express breach of agreement has been necessitated by the fact that most of the charged or chargeable items are the very items that a farmer requires to create the means of repaying his debts. The absence of any specific rights enabling bankers to seize such property however, is capable of being viewed as a denial of power to intervene in the treatment of the property until there has been either a crystallisation of the debt, proof of fraud or failure to use the proceeds from the sale of charged items to discharge the debt.

With regard to the sanction of imprisonment, this is no recovery for the holder as it does not amount to a repayment of the money. When the farmer is imprisoned, the loss to the bank is virtually absolute as it is not permitted to take any unilateral action against an imprisoned person's property. In Anort Sondoyi v The People¹⁵³ where upon conviction of

¹⁵² Section 4(1) (a).

¹⁵³ 1978 2 R 148.

accused on charges of theft and forgery, a bank seized the prisoner's private motor car in order to recover the amount involved, the court held that a complainant may not seize the property of a convicted person without an order of the court. Obtaining such an order will obviously involve a bank in further expenses and delays.

Finally, the value of the agricultural charge as security cannot be judged independently of the value of the farmer's agricultural assets and/or farming stocks. For peasant and subsistence farmers whose stocks consist only of simple homes, axes, calabashes etc, these are unlikely to be acceptable to banks. The agricultural charge as a means of spreading credit, therefore, favours the big commercial farmers who have such assets as tractors, ploughs, healthy animals, etc.

6:8. The Trade Charges Act

In this Act, registration of all trade charges is required as a form of guarantee against fraud. It is believed that as the register is open for public inspection, it ensures that financial institutions are not deceived by traders who offer one property as security to several financial institutions. One remarkable omission in the Act on this point is the absence of any indication as to the effect of non-registration. In other words it is not specified whether any

trade charge which has not been registered is of no effect whatsoever and whether a bank has no relief whatsoever against a delinquent debtor who gave it a trade charge which was subsequently unregistered.

One of the most negative characteristics of the trade charge, as seen in Chapter Three is that it does not necessarily ensure that its holder will enjoy a superior claim over all the claimants or subsequent purchasers for value of a stock-in-trade. This clearly makes a stock-in-trade the most insecure of secured properties and inappropriate as a means of security.

Perhaps it can be said that by allowing the provision which waters down the protection offered by a charge over a stock-in-trade to exist side by side with the one purporting to make it attractive and effective, the authorities depicted a situation of ambivalence. This in turn portrays a realisation on the part of the authorities, that their objectives were rather unrealistic. This is because by its very nature a stock-in-trade is an article of commerce for which there is a permanent invitation to treaty. Thus as the charge does not mean that such an item must automatically cease to be available for sale, it would not be easy for any one to prove fraud by alleging that the purchaser knew about the charge or its violation. In addition, apart from possibly standing in conflict and even violation of a now established rule of market

overt,¹⁵⁴ it is also an impracticable form of security which envisages that each time a person went into a shop, they would have to peruse a charge register to ensure that the stock-in-trade in display has not been bonded to a bank. Clearly shopping and buying habits would have to be revised under such circumstances, but not without grave inconvenience.¹⁵⁵

Given such contradictions and impracticalities, it is not surprising that the trade charge has not been a very useful form of security. One researcher was told frankly that, "even if approaches are made to them under the terms of the Act, bankers would not be willing to lend as it does not provide adequate security".¹⁵⁶ Bankers believe that the Act offers no means of preventing fraudulent borrowers from disposing of property constituting the security. Thus, even though the creditor is entitled to take possession immediately after default of payment on perishables, and after five days in respect of other items, there is no guarantee that the items will be there when he moves to seize them. Besides bankers do not like property seizures as they present them with unique problems of dealing for which they are not trained.

154 See Bishopsgate Motor Finance Corporation Ltd. v Transport Brakes Ltd. [1949] 1K.B.322. See also P.5. Atiyah Sale of Goods (6th Ed.) (London : Pitman, 1980). P.242. See also Chapter Three above.

155 Mphanza P. Mvunga, "Zambia", op.cit.

156 D.E. Ndhlovu, Law of Securities in Zambia, An Obligatory Essay submitted in partial fulfilment of the LL.B. Degree University of Zambia, 1977 (unpublished).

6:9. The Companies Act

Under the terms of this Act, as in the other two already discussed, there is no stipulation to ensure that any loans guaranteed by means of a charge on a company's assets will be automatically recovered. Neither is there any guarantee that the company or its officials will not dispose of the property without the agreement of the bank.

6:9:1. Common Characteristics of the Agricultural and Trade Charges

As seen the principal objective of the authorities in introducing Agricultural and Trade charges in Zambia was to go around the obstacle of stringent security requirements imposed by the lending institutions, especially banks. In a country with a highly mobile subsistence farming community, these new securities however present a unique set of problems, which make them rather inappropriate. It is obvious that the legislators were oblivious to the actual conditions afflicting the farmers and traders for whom they were legislating. Many of them can only offer simple items which even if charged are commercially unviable as securities and are susceptible to such ravages as drought, disease in the case of animals, and poor storage in that of crops.

Another common characteristic running throughout the Acts which deal with the formation of charges of various types is the requirement for their registration. It is clear that the Acts create a proliferation of registration departments or offices. Obviously a lot of time and money would be saved if all the Acts referred to a single office of registration. At least in respect of bank lending and other lending by financial institutions, such a measure would not only create a cost saving incentive but it would also enhance security as records would not be scattered all over the country.

A single but widely spread department would also serve to remove the confusion which the present system creates as some of the Acts do not even specify the premises or addresses of the designated registration office. Thus, it is not, clear for instance, whether the Registrar of Trade Charges is at the Ministry of Finance or is the same one as the registrar of companies, who is at the Ministry of Commerce and Industry. In all probability some people might assume that he or she is the same officer as the Registrar of Lands and Deeds who is at the Ministry of Lands and Natural Resources. Another factor about the registration requirements of the Zambian Acts is that apart from creating confusion through a multiplication of departments, they also pose a dilemma for the rural based, peasant farmers and entrepreneurs who have to endure long and expensive journeys to Lusaka where all the offices are based. While there they must endure further exhaustion through

searching for the right offices. Given that they will have made long journeys to bank offices before seeking registration, it is obvious that whatever advantage these securities may create are diminished. The use of postage as an alternative offers only a little relief as rural people would still have to travel to their district centres to mail their papers.

In addition, there is a requirement to pay duty on the deeds themselves and other registered securities. An average Zambian borrower has no idea about the location of the Stamp Duty Commissioner's Office.

In respect of enforcing the lending institution's rights to repayment or in the charged property, it may be noted that in addition to the difficulties already noted in section 7:1,2 and3, the creditor's options are very limited. First, they have the option of following a lengthy action for breach of contract. If they succeed, they may also face a lengthy period of recovery as courts tend to give lenient repayment arrangements.¹⁵⁷ Indeed in a country with a largely illiterate population transactions between individuals and commercial banks - many of them powerful international institutions, may not be viewed impartially by the courts. There is a trend these days for courts to consider such transactions as products of unfair bargaining which must be handled in a way which offers protection to the weaker party.

157 Private Interview with Mr C. Mabutwe, Legal Counsel, ZNCB.

Thus in Lloyds Bank v Bundy,¹⁵⁸ which is persuasive authority in Zambia Lord Denning MR said :

"The English law gives relief to one who, without independent advice, enters into a contract upon terms which are very unfair or transfers property for a consideration which is grossly inadequate, when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other".

In Bundy, a charge on an old man's house which he had signed in favour of a bank for the purposes of helping his son to secure a loan was declared null and void for among other reasons, the desperation and ignorance which overwhelmed the old man in signing it.

Secondly, charge holders may let a criminal prosecution for fraud to proceed against the defendant. As seen already, this does not amount to a satisfaction of the debt as the defendant merely gets a jail term upon conviction. In any case such prosecution is not automatic as a lengthy procedure to obtain the DPP's consent has to be fulfilled.¹⁵⁹ So far no case has been brought against a delinquent debtor in this way.

Finally, it may be added that all the legislative enactments providing for the creation and administration

158 [1975] Q.B. 326 at 339. See also National Westminster Bank plc v Morgan [1983] 3 All.E.R.85.

159 Criminal Procedure Code CAP 160, Section 84.

of charges are only permissive measures. They do not compel bankers or other financial institutions to alter their lending attitudes and practices. To this extent, the most significant achievement of these enactments has been merely to remove the customary excuse often raised by the banks for not giving credit; namely, that customers are not prepared to provide security for the money advanced to them.

6:10. Land As Security

In Chapter Three it was stated that land is one of the most prominent forms of collateral security for credit. An individual or institution may mortgage its land to a financial institution for purposes of obtaining credit.

One of the basic weaknesses of this mode of security in rural Zambia however, is the uncertainty of people's tenure or title to the lands they live and work on. In many African societies land is held under customary tenure and the peasant has no exclusive title to his land which can sufficiently satisfy a bank or financial institution.¹⁶⁰

The principal cause of the uncertainty of tenure among rural people is the absence of registered title. Until the advent of colonial rule, most Africans kept no written records

160 See Tijani v Secretary of South Africa [1921] A.C. 399 per Viscount Haldane. See also Margaret Rogers and A. N. Allott, "Introduction and Report of Proceedings", op.cit. P.15.

of their lands or tenures thereto. In the absence of records those aspiring for credit from modern financial institutions were automatically excluded from consideration. As prudent business concerns banks require evidence of title to land. They are also compelled by the provisions of the Lands and Deeds Registry Act¹⁶¹ to show evidence of their newly acquired interest in the borrower's land by registered documents. Without definite tenure and registered title banks cannot meet these requirements.

It is important to mention, in addition to the foregoing that further difficulties about customary land holding are created by the absence of delimited boundaries for some of them. Registration demands a defined parcel of land over which registered rights are capable of being exercised. But in the case of lands held under customary tenure, even where it may be possible to determine the extent of the land holder's rights or borders, it may still be impossible to register them or the land as such lands may form part of family or lineage properties. In some cases lineage members may not even be ascertained or ascertainable - but present family members may nevertheless still recoil at the thought of parting with their heritage.

Another problem hindering land registration is the absence of appropriate machinery and manpower. The land registration system under both the Lands and Deeds Registry Act

161 CAP 287.

and The Housing (Statutory and Improvement Areas) Act are not suitable for the purposes of registering land held under customary tenure. This is because the surveying processes required by both Acts are extremely expensive and unnecessarily complicated for the purposes of the local people, namely to acquire certificates for borrowing purposes. According to these two Acts, each application for land registration must be supported by a map or sketch produced by a technique called cadastral surveying. Due to the limited numbers of equipment and qualified personnel to do those surveys, only a few sketches can be produced, thus making the process slow and expensive. Another difficulty is that, even though section 14(1)(6) of the Lands and Deeds Registry Act empowers the Surveyor-General to waive the requirement to submit a more detailed diagram or sketch and replace it with a sufficiently detailed but simple diagram made by less technical means, this only entitles a land holder to a 14 year lease instead of the more economical 100 year lease which cadastral mapping offers.

Admittedly it is possible as Mulimbwa asserts, for the banks and other financial institutions to base their loans on the cost of labour in terms of Section 3 which provides that "anything resulting from the expenditure of capital or labour or the making of any material change in the use of any building or land is enough to constitute an unexhausted improvement for the purposes of making a mortgage".¹⁶² Problems however, still

¹⁶² A.C. Mulimbwa, op.cit. P.395.

exist as far as land held under customary tenure is concerned. Thus, whereas it is possible in terms of Section 3 for a customary land holder to sell or mortgage improvements on his land, that possibility is watered down by the requirement that a person can only acquire rights in land under customary tenure if he or she is a member of the community in whose area that land falls. It is also important that that person must have the permission of the authorities in that community and be prepared to abide by its traditions. As a bank would be a "stranger" in most rural communities, it would have to secure the permission of the traditional authorities to acquire the land by way of a mortgage. "In the event of default and the bank wishing to realise its security, the requirement of residence would seriously limit the range of people it would sell to".¹⁶³ The value of the security under those circumstances is seriously diminished.

6:11. The Credit Guarantee Scheme

Having realised that the banks and other financial institutions were not going to drop their demand for adequate security for loans the government decided to introduce a guaranteeing scheme for the least able of the credit seekers, viz, the small scale industries, village industries and small scale farmers. Under the scheme the Bank of Zambia guarantees to re-imburse commercial banks for any losses arising from the

¹⁶³ Ibid.

failure of any members of these groups to repay their loans. But despite the authorities' intentions, some of the circumstances, conditions and procedures of procuring guarantees still give rise to some doubts about the efficiency of the scheme.

One of the main obstacles is the distance which separates most of the intended beneficiaries under the scheme from both the Bank of Zambia and the commercial banks. While the majority of the small scale and village entrepreneurs as well as small cash crop growers are in the rural areas, the credit guarantee department like the Bank of Zambia itself is in Lusaka. Although there is a small provincial branch of the bank in Ndola, its task is to deal with foreign exchange transactions of the copperbelt based businesses while the rest of the bank's functions continue to be performed in Lusaka. For most of the credit seekers therefore, not only are they faced with long distances to commercial banks, but they must also deal with an even more daunting prospect of sending or taking their papers to Lusaka for processing. As in most other cases involving long distances, this causes delays which may supersede the benefits of the credit itself.

Another worrying aspect about the scheme is that it has no automatic coverage of all the losses that might arise from

inability to pay by debtors. According to Felix Kani¹⁶⁴ the scheme is designed to cover only those losses suffered and not the entire amount that has been loaned out. This is an indication of the Bank of Zambia's own careful approach to the scheme. For as it stands the bank's approach suggests that it is prepared to reject claims by banks whose lending has not been adequately protected by careful assessments and securities. In addition, the scheme is not a free service as the banks are required to pay a certain amount of money, being a per centage of each amount guaranteed to the Bank of Zambia.¹⁶⁵ Other costs are expected to arise from project assessments, supervision of borrowers and administration.¹⁶⁶ As these conditions by the Bank of Zambia show a degree of wavering commitment to the scheme, it is difficult to see how far the banks will go to support it. It is perhaps too early to tell as to the success or failure of the scheme.

164 "Credit Guarantee Scheme", in Zambanker, A House Magazine of the Bank of Zambia No.15, April 1984, P.15. Felix Kani was one of the architects of the scheme.

165 Felix Kani, op.cit.

166 Only recently Dr. C. Ng'andu, Director of the Small Industries Organisation expressed concern about the scheme. See Zambia Daily Mail, 10th September 1987. For other concerns before this see National Mirror, March 24 to April 5, 1986, P.3.

6:12. Conclusion

Government regulations and measures aimed at controlling banking in Zambia and achieving an improvement in the supply of credit are unlikely to make much of a difference as a number of flaws characterise their provisions and procedures. Some of the flaws are fundamental as they relate to the very objectives of the regulations. Here the most significant examples are the requirements for banks to be locally incorporated, with Zambians or long-term residents represented on their boards. The biggest defect of the regulations however has been their failure to alter the attitudes and outlook of both Zambian and foreign owned banks. By and large these banks have not deviated from their age old dependency on collateral or other forms of security for all their loans. They have also done little to moderate their negative outlook towards the indigenous people whom they regard as generally risky borrowers with minimal business skills. They have not gone out of their way to redress the conditions afflicting such local people by devising new lending ways and imparting some business skills to them.

The government itself has also failed to achieve any significant change in the business skills and outlook of its people. Many people still regard loans as gifts which are not supposed to be repaid. The Government's sanctions against defaulters are very limited and unhelpful especially where they

involve the mere imprisonment of culprits without a further requirement to pay. These flaws seem to stem from the fact that the government's objectives are not co-ordinated with its regulations, which tend to be ad hoc and unsystematic.

With regard to the requirement for banks to be locally incorporated, this as a means of achieving control is insignificant as foreign banks still enjoy the power to determine the capital levels, which in turn decide the size of a bank or its deposit and lending levels. They also determine the management levels and fill them up with their own men. Other tools include the power to enter into management and consultancy agreements, over pricing their services and charges and their control of the needed funds which constitute a large part of the government debt. The same doubts can be said about the requirement for Zambian representatives on the boards of directors. In real life, boards are not the managing authorities of their companies as they have little time and information. They depend for their functions on the co-operation of the executives. As these continue to be largely foreign or foreign trained, the Zambian government's objective of achieving control via the mechanism is rather futile.

The other problems are that the Zambian regulations are subjected to too much bureaucracy. In addition to the Bank of Zambia, both the Ministries of Commerce and Industry and Finance and Development have a say in the management of the economy and foreign exchange. There are also numerous

departments involved with the various registration requirements. All these procedures are time consuming and costly. The fact that the departments involved are far away from the neediest people in the rural areas also diminishes their value.

With regard to particular legislative enactments, the Agricultural Credits Act is riddled with inadequacies in respect of ensuring that farmers are obliged to repay their debts. It does not adequately outline the rights of the banks and the circumstances in which they may act against delinquent farmers who either fraudulently fail to repay the loans or dispose of the charged properties. Similarly, the Trade Charges Act also fails to provide defined or definite rights of a lending institution.

The use of land as security is also beset with legal and practical impediments. These include the inability of the local people to adduce title deeds or to register their land. Other problems are the cost of surveying and registration.

The credit guarantee scheme which was introduced recently by the Bank of Zambia, Act, 1985 has also emerged with certain problems. Aside from the problems of the bank's distance from the rural borrowers, the other problems are that collateral security is still a requirement and the recovery is not automatic as only actual loss is covered and the banks are

required to pay some money in advance to the Bank of Zambia for its protection.

CHAPTER SEVEN

SUMMARY AND CONCLUSIONS.

Commercial banks came to Zambia as part of the process of colonisation and westernisation of the central and Southern African region. Their participation in that process as in all colonial situations was promoted by what the colonial authorities saw as a vital need to generate and bolster a trading relationship between the colonies and the colonial powers. In particular, the banks were required to supply financial resources to various colonial conglomerates, so as to enable them to claim raw materials of various types from the colonies and for the movement of such raw materials to the processing and manufacturing industries of the colonial powers. The banks also provided a convenient service by handling and channelling funds realised from the reverse trade, involving the sale of finished goods to the colonies to the various personal and dividend accounts of the groups concerned. In addition they also handled the emoluments and savings of colonial functionaries and settlers.

In Zambia (or Northern Rhodesia as it was called during the colonial era) the banking business formed part of the much larger English and South African banking units. This means that Zambian banks were branches of the South African and British banks which also operated in Southern Rhodesia and Nyasaland. The coming into being of the Federation of Rhodesia and

Nyasaland in 1953 appropriately cemented the relationship, both in political and business or banking terms.

In all five banks operated in Rhodesia and Nyasaland. These were the Standard Bank of South Africa, the Bank of South Africa which emerged as National Bank of South Africa and then became the Barclays Bank DCO. The other banks were the National and Grindlays Bank, the Netherlands Bank of South Africa and the Ottoman Bank. After independence in 1964 more banks began to set up in the country bringing the total number to 10 by 1987.

Alongside the increase in the number of banks in Rhodesia and Nyasaland, as well as in Zambia, after independence, went a corresponding rise in their asset holdings and services. At the end of the federation in 1963, the total assets of all the banks combined was £106.8 million. This represented an increase of nearly 30 per cent from a total of £86.6 million which was held in 1953 when the federation was created. By 1985, 20 years after independence, an even bigger increase had occurred with the total amount of assets reaching K4 billion or £2 billion.

On the liabilities side these had also grown from a modest £82.4 million in 1952 to £103.6 million by 1963; an increase of 25.7 per cent. By 1985 this had reached K3.6 billion or nearly £1.3 billion. Of these liabilities, the biggest have been the long dated savings and fixed time

deposits. In recent years demand or current accounts have declined as entrepreneurs and companies which are unable to secure foreign exchange for their import requirements have resorted to saving their money in longer-term deposits. These deposits have the advantage of being interest bearing which makes them more attractive over the non-yielding current accounts. These last accounts are more suited for use as working accounts for the day to day requirements of the business.

Aside from those assets and liabilities which Zambian banks hold in the form of advances to their customers, reserves and other deposits at the Bank of Zambia, and other physical items like buildings, etc., the rest of these banks' assets tend to be highly liquid. Thus, in December 1984, for instance, even though the total formal liquidity ratio was only 30.8 per cent of total liabilities, the actual ratio was 32.3 per cent. In 1985 the numbers were 23.6 for the formal ratio and 47.0 in actuality. Some of the causes of this excess liquidity are the vigorous credit and exchange controls which the Bank of Zambia has been implementing since the early 1970s. These have reduced the ability of the various uses of primary liquidity to absorb some of the excess liquidity. The other cause is undoubtedly the huge amounts belonging to outside sources which are still awaiting externalisation. A directive by the Bank of Zambia requiring all banks to transfer such funds into a pipeline

account held with it has, however, minimised the significance of that factor as a source of liquidity.

The attitudes, practices and policies of the banks themselves with respect to lending cannot on the other hand, be ruled out when it comes to apportioning responsibility for the high levels of liquidity that continues to characterise the balance sheets of Zambian banks. There can be no doubt, for instance, that given the ever growing size of long-dated deposits and easily convertible liquid assets, the continued shortage of credit, owing ostensibly to the fear of lending long term, is now without basis. This is because the availability of such long dated liabilities should make it possible to increase credit and act as a cushion against sudden surges in demand which could overwhelm a large current account based banking system. It is for this reason that it can be said that the present inactivity in the use of primary liquidity is partly generated by prevailing attitudes, policies and practices of commercial bankers.

In a country which is seeking to establish a mixed economy and where banks are the biggest deposit taking group amongst a number of other institutions, the role of banks in promoting economic growth ought to be very prominent indeed. In addition, given the potential control which the authorities can exercise over these institutions and on the money supply and the foreign exchange situation, including in either case the ability of the banks to respond swiftly to any directive, it is

clear that these institutions are in a unique position as development agents. Indeed there has been a growing amount of empirical research and theoretical commentary on the developmental authority of financial institutions and banks in particular. Starting with Joseph Schumpeter's work in 1934, a number of other works have come up with varied pieces of evidence. These include Raymond Goldsmith's work which involved 35 developed and developing countries. He demonstrated in that work that a high financial structure tended to correspond to a high real development. Others like Rondo Cameron, Griggs, Greenberg, Milton Friedman and Hugh Patrick also see banks and financial institutions in general as a necessary condition for development. Even those like Gurley who emphasise the role of residual factors such as cultural and religious practices, political stability, raw materials, climate etc or alternatives like taxation and planning, do nevertheless acknowledge the complementary role of financial intermediation to development and growth.

In Zambia (including before independence) the authorities have always expected that banks and other sources of private capital will play a leading role in development. From the time the B.S.A. Company assumed control, the authorities have persistently stated that they could not make certain investments because they lacked sufficient capital resources. They also stated that they wished to leave the task of investing in business and industry to private sources. The

government was only going to be involved when no private investors were available to initiate certain, vital businesses or where a business contemplated was too important or too big to be left in the hands of private investors.

After independence, the Zambian government pursued much the same policies and outlined its objectives in a white paper entitled "policy for industrial development". During both eras however, private investment has never been able to satisfy national expectations. Some of the causes of this negative trend were the attitudes of colonialists who had no real interest in the territory. These people concentrated largely on the mines where they extracted enormous profits without ploughing some of them back for development. Other causes were social attitudes like racial prejudice which promoted active discrimination against Africans and a suppression of their farming and entrepreneurial endeavours. In addition the creation of the federation of Rhodesia and Nyasaland helped to drain out all of Zambia's surplus earnings to help develop Southern Rhodesia and left it (Zambia) with enormous debts in return. It was due to the continuation of these same attitudes and practices and a realisation that sufficient investment was not going to occur that the government introduced the Mulungushi and other reforms after independence. Those reforms sought to make the government a partner in the commanding industries so that it could direct their investments to appropriate and desirable ends. Many of the reforms however, were plagued from

the initial stage by capital and management problems and in the case of the banks, they were never even able to take off. Apart from restricting the borrowing rights of foreign enterprises and businessmen as well as a few other requirements relating registration, capital levels, board membership and supervision of banks, such important aspects as lending practices remained virtually unchanged.

Although some increases in the level of lending occurred during federation; such as the rise in public sector borrowing from £25 million in 1952 to £53.2 million by 1963, the bulk of the banks' operations remained restricted around the handling of customers' profits and foreign exchange. During other isolated years higher but fluctuating increases did occur in respect of certain sectors and industries. The largest proportion of bank lending during federation went to distribution, which consisted of the retail or import and export trade. It was followed by manufacturing and non-African agriculture. Lending to the mining sector was small as this group was part of world wide conglomerates which were able to raise their credit requirements externally. They were also unable or unwilling to satisfy the stringent requirements relating to the mainly short-term lending practices of the local banks. For the mining companies such practices were impracticable as most of their investments take long to generate profits. Lending to the African sector, on the other hand was virtually non-existent during that time. It was for this reason that the Northern

Rhodesia government established the Industrial Loans Board, the Land Bank and INDECO to provide some credit to this and other neglected sectors.

After independence commercial bank lending behaved in much the same way as it did during colonial rule. Although it is impossible to establish the actual amounts lent out by banks before the reforms - owing to the absence of appropriate data, it has been agreed that the non-local or expatriate and immigrant dominated enterprises continued to be the biggest beneficiaries.

By the time of the reforms, the economic climate in the country had begun to change. First the liquidity position of the banks moved from a surplus to a negative; although it recovered afterwards owing to heavy deposits from importers who were unable to secure foreign exchange. Other problems have been the growing balance of payments problem, the poor commodity prices, poor agricultural output and drought. There were also shortages of traditional securities and agreements with the IMF which introduced severe credit restrictions. As a result of all these factors, the lending functions of commercial banks have since the reforms been very unsatisfactory in the eyes of the authorities. They have also been subjected to constant monitoring and controls. One notable characteristic of the controls that have been initiated is that, while they reduced the borrowing requirements of private enterprises, they also had the effect of raising lending to the

government which used it to finance its deficit and budgetary requirements. Thus between 1971 and 1972 for instance, government stocks held by commercial banks increased from K22.6 million to K29.2 million. The holdings of treasury bills also increased. Between 1977 and 1978 bank lending generally declined from K893.9 million to K454 million. It was only with changes to the regulatory system that significant increases occurred in 1985 when credit levels reached k1,224.7 million.

If the economic climate and changes to the policies and regulations could change the lending levels, the question then is what else determines the lending practices of Zambian banks? Part of the answer to this question has already been seen and it is that Zambian banks like many third world banks are highly dependent on policies and practices copied from external sources. The attitudes and ideas of their managers - who are in most cases expatriates themselves, are also not appropriate as they tend to discriminate against the vital indigenous peoples and enterprises.

With regard to the influence of external policies and practices it is common knowledge that demand following finance and the real bills principle are the two model policies and practices followed by Zambian banks. These doctrines prevent banks from venturing out in rural areas to initiate mobilisation or savings schemes and to lend towards simple production systems. They also fail to adopt new support practices like helping customers with their applications and

with record keeping, or by simplifying their office practices so that they become less cumbersome, less intimidating and less expensive. Other practices like part ownership of their customers' businesses and the placing of less reliance on collateral security are also still shunned. Some of the factors aiding and abetting these practices and attitudes are the wide spread lack of business experience amongst the rural people. Other customs like the extended family system which has the effect of diverting funds from the intended use to support relatives are also widely resented by banks. There is also an acute shortage of appropriate amenities and facilities to attract bankers, many of whom are expatriates from advanced countries, to rural areas. The failure of the authorities to attend to these problems by educating people about savings, borrowing, accounting and by providing amenities, has also greatly helped to continue these attitudes and practices.

Another important determinant of the current banking practices is, of course the regulatory process itself. Although little has been written on the regulation of banks in Africa generally owing largely to the influence of positivist thinking, it is now known that these are crucial not only to the development process but also to banking itself. Where the regulatory system integrates banks in to the national plan either directly or by means of localising their capital base and management national objectives are more likely to be satisfied. Similarly if regulations are introduced to protect

bank lending, to enforce contracts and to provide secure tenure then banking is more likely to prosper. On the other hand, regulations may themselves hinder banks from pursuing the necessary intermediation that promotes growth. As Mckinnon and others have asserted some regulations have the effect of repressing rather than rejuvenating appropriate mobilisation and allocative processes.

In Zambia the regulation of banks falls into three categories. These are the administrative regulations which relate to the formation and structural framework of banks and the prudential and fiscal regulations which affect financial safety and national economic controls which are imposed on all financial institutions to avert inflation and other economic pressures. The other regulations are largely judicial and usually involve the enforcement of banker and customer relations, Bills of exchange, etc.

With regard to administration, aside from the wide ranging and rather imprecise force of the pre-1911 English Statutes, the common law and doctrines of equity, all of which were extended to the country by the Northern Rhodesia Order-in-Council (the country's reception statute), the first significant form of regulation appeared in 1956 in the form of the Bank of Rhodesia and Nyasaland Act. That Act created a central bank to regulate the formation of banks and the practice of banking in the federation. Having been amended several times, this Act was finally replaced by the Bank of

Zambia Act in 1964, which was itself afterwards replaced by the Bank of Zambia Act, 1985. Other statutes were the Banking Act, 1959 whose principal contribution was to separate the functions of registration of banks and related aspects from prudential and fiscal administration. The function of registration went to government departments; the Registrar of Companies and the Registrar of Banks. Prudential and fiscal regulations on the other hand remained the responsibility of the central bank, although it is known that from time to time some government ministries issue directives which have the same effect as fiscal control or of contradicting it. The Banking Act 1959 was replaced in Zambia by the Banking Act, 1965 which has itself since been replaced by the Banking Act, 1971. The Banking Act 1971 and the Bank of Zambia Act, 1985 are therefore the main pillars of banking regulation in Zambia today. The Banking Act, 1971 was a product of the failed attempt by the government of Zambia to acquire controlling interests in all the banks operating in the country. Its central provisions are:

- (a) the requirement that all banks must be incorporated and registered in Zambia.
- (b) that all banks must have Zambians or established residents occupying at least half of the seats on their boards of directors; and,
- (c) that banks in which the government holds some shares shall maintain equity capital of K500,000 while those in

which the government has no stake will require not less than K 2 million to be registered.

The Bank of Zambia Act, 1985 on the other hand is a product of the present economic crisis afflicting the country. Its main provisions include those requiring the governor of the Bank of Zambia and his deputy - or simply the principal figures in the management of the economy to possess recognised qualifications in financial management. The Act also replaced the old Currency Act and placed all the matters relating to currency under the Bank of Zambia. The Act also reflects government concern about the inadequate credit situation in the country. It does this by introducing a credit guarantee scheme to be administered by the Bank of Zambia. This scheme has been designed to provide protection to Bankers and other financial institutions who make loans to small enterprises. This is intended to be a reaction to the high security demands of the banks which have kept lending at a very low level. The Act also authorises the Bank to act as banker to parastatal organisations and other persons approved by the Minister. In terms of the Act the Bank of Zambia has been able to suspend its monopoly in fixing interest on the deposits and lending. Accordingly, individual banks are now able to fix these rates in accordance with their liquidity.

Apart from these statutes other legislative enactments to which banks in Zambia are subjected are the Companies Act, the Disposal of Uncollected Goods Act, the Debtors Act, the

Stamp Act and the Cheques Act. Banks are also required to comply with the terms of the Evidence (Banker's Books) Act.

With regard to securities, the most important statutes are the Agricultural Credits Act which authorises farmers to use their farming stocks and other implements as security for loans. These items can be used as security in two ways. A farmer can create a floating charge on some of them. The second way is by creating a fixed charge on some of them. The main difference between them apart from the type of item involved is that a floating charge can only be created in favour of a bank. In either case however the charge holder is entitled to seize and sell the charged item if the farmer fraudulently or otherwise fails to discharge the debt. The farmer is also required to use any money realised from the sale or insurance of any charged items to discharge the debt. The Trade Charges Act works in much the same way in respect of traders as the Agricultural Credits Act does for farmers. Traders may use their personal properties or stocks in trade to create charges in favour of financial institutions.

Another important form of security is land. This can be mortgaged to banks as security for loans. In Zambia the provisions of the Lands and Deeds Registry Act must be complied with before any interest in land or title to land can be created. The Land (Conversion of Titles Act) abolishes all freehold and fee simple land in the country. This has been replaced by statutory lease. It also provides that all

transactions in land must be authorised or approved by the President. With regard to the Lands and Deeds Registry Act this provides for the registration of all interests in land. Despite these two Acts however, the bulk of the country's lands continues to be covered by customary tenure.

As instruments for attaining the government's plans and objectives these regulations have been found to be full of inadequacies and in some respects repressive. Thus, with regard to getting banks to change their attitudes and practices, it has been seen that there is no legislative or planning attempt in that regard. The banks are not directly required to meet planned targets. Similarly, there is evidence that the government has surrendered on the matter of attaining control through shareholding, namely, Zambianisation of outlook and principal interests. This has left the bulk of the banking industry in the hands of foreigners who have other interests to serve. There is also no requirement for banks to devise new debt collection methods or other ways of involving banks in the businesses of their customers. The concerns of bankers relating to defaults and fraud have equally not been adequately confronted.

The authorities have instead, elected to concentrate on such aspects as registration, management by board of directors, capitalisation, guarantees and charges. Even these however are not without defects. Registration as seen is overshadowed by potential interdepartmental conflicts or contradictions as

there is more than one registering office. This as seen also applies to some securities and stamp duties where all kinds of registration are required with the result that customers may experience delays and sometimes even fail to get to the right office. With regard to management, it has been seen that the authorities have chosen to use boards of directors rather than actual management. It is now common knowledge that boards are not the real managing authority as they lack sufficient time and expertise to run the day to day operations of a company. Furthermore, individual members of the board are not supposed to represent the interests of one section or group of shareholders. Their duty is to the company. National interests therefore may suffer where they conflict with the immediate profit motives of the foreign owners of a company. By choosing to make board membership the legal requirement rather than management the Zambian government has therefore left banks free to use foreign managers, management consultancies and to impose severe limitations relating to the supply of raw materials, technology and services. No measures have been taken to prevent over pricing and other charges whose sole purpose is to facilitate externalisations of profits. Although restrictions were placed on the borrowing requirements of foreign enterprises, these were not sufficiently supported by law. They were also not accompanied by sufficient criteria to ensure that required levels are met or that proxies and other legal devices are not used.

The capitalisation requirement on the other hand is diminished in significance by the fact that banks can not be forced to maintain higher capital levels than the statutory requirement. This situation in another sense is a defeat for the government, as it has entailed that contrary to original government objectives, the foreign banks continue to be the biggest and therefore retain the power to set policies and practices for their smaller competitors.

The Credit Guarantee Scheme of the Bank of Zambia Act, 1985's defects include the fact that it is administered by the Bank of Zambia, which makes it out of reach for people in the rural areas. Secondly, the protection it offers is not free. Banks are required to deposit a certain percentage of money in order for them to be covered. This clearly diminishes the intended aim of encouraging lending by getting rid of the problem of collateral security.

Finally, such securities as land, agriculture and trade charges are characterised by cumbersome registration requirements. In the case of land the existence of a widespread customary tenure means that it is not possible for most people to take advantage of bank credits. Apart from the absence of proper title to the land, such tenure also means that a landholder may not be the only one entitled to it. He may also be unable to define the extent of his land. The only way such a holder may be able to use his land to obtain a loan if he has no unexhausted improvements on it is by showing proof of the

cost of labour. The ability of a bank to enforce its rights on customary land, may however, be hampered by the inability to secure permission from the local chief. This is because in some parts of the country a non-resident may not acquire land or exercise any rights on it. Where these problems are of little significance people may nevertheless still fail to use their land as security because the mapping techniques and facilities required for registration are very scarce and expensive. What conclusions then can be drawn from the regulation and role of the banks in Zambia?

Basically the conclusions are that the actions of the government particularly after independence demonstrate that the government is aware of the crucial role of law in economic development. It has demonstrated this by adopting legal mechanisms to try and implement all the new policies it has adopted.

Another conclusion is that, despite such government regulations and efforts the role of the banks in meeting the government's development requirements remains unsatisfactory. While this is partly due to the existing economic situation and the continued application of attitudes and practices which are not conducive to good lending in the country, the bulk of the blame goes to the defective nature of the very government regulations themselves. By and large these regulations do not address the important issues of identifying the country's interests with those of the banks. Thus, we see no requirement

in the Banking Act, 1971 for the banks to sell their shares to Zambians or to appoint Zambians to management positions. On the contrary the regulations give the foreign banks a golden opportunity to set the pace and agenda for banking practice by restricting the capital requirements of Zambian owned banks but not those of the foreign owned banks. Another method has been board membership which in today's terms is a backward step as boards owe their duties to their companies and not to third parties. In any event boards, as seen, are not the actual managers of a modern corporation.

There has also been a failure on the part of the government to exercise its duty to teach thrift, improve amenities and to devise effective credit protection methods. All these are areas in which the legal system has enormous potential.

With regard to the other regulations or securities, these too have been found to be defective. The regulation of banks in Zambia can therefore be termed as a surrender or failure to defeat multinational corporations. It is also a demonstration of the effectiveness of and availability of the avenues that these corporations can use to avoid strangulation by host governments. In other words, it becomes impossible for these governments to seal all the loopholes. Conversely, these companies are able to force the authorities into ad hoc management, whereby they try to attack one loophole at a time and in the process leave a big breathing space for these

companies. The Zambian measures are an example of just such a situation. They are desperate measures aimed largely at minimal and selective control. They are also an example of a failure by the government to recover from its 1970 defeat at the hands of the foreign banks, to set clear and precise objectives. In subsequent measures therefore, what we have is a continuous conflict of objectives as evidenced by such objectives as spreading administrative responsibilities by means of a multiplication of registration offices, while at the same time purporting to generate credit for rural areas. The other examples are the attempt to keep both the market overt rule and the sanctity of the charge, the attempt to control land and other interests in land while maintaining customary land holding and expensive mapping requirements at the same time. In short, there is ample evidence that the government of Zambia needs to set its priorities straight.

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